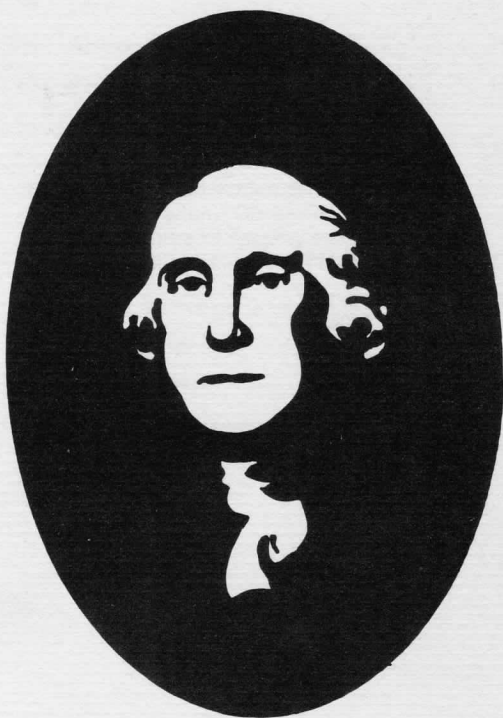


Faculty Code



The
George
Washington
University

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FACULTY CODE

Governing the Academic Personnel of the University

The Board of Trustees of The George Washington University, by virtue of the authority vested in it by the University Charter, hereby establishes the following Faculty Code. The Faculty Code applies to all University faculty in all colleges, schools, divisions, departments, and comparable educational divisions. Constitutions, by-laws, and established procedures of governance devised by subdivisions of the University are subordinate to the letter and spirit of the Faculty Code.

The Board of Trustees of The George Washington University has authorized the publication of this recodification (first printing, 1937; second printing, 1945; third printing, 1958; fourth printing, 1964) of the Faculty Code governing the academic personnel, together with the Procedures for the Implementation thereof.

This recodification was adopted by the Board of Trustees at its meeting of October 21, 1976, as recommended by the Committee on Professional Ethics and Academic Freedom of the Faculty Senate, the Faculty Senate, and the President of the University. The University is indebted to the several committees of the Faculty and of the Board of Trustees, and to the administrative officers, for their work in compiling and revising these rulings, which constitute the statement of the rights and privileges, and the responsibilities, of the academic personnel of the University.

December 1, 1976

I. Grades of Academic Personnel

The grades of academic personnel are:

A. RETIRED STATUS

Professor emeritus, professor emeritus in residence, associate professor emeritus, associate professor emeritus in residence, and retired (in any given rank for age or disability).

B. ACTIVE STATUS

1. *Regular*: Professor, associate professor, assistant professor, and instructor.

2. *Limited Service*: Adjunct professor, adjunct associate professor, adjunct assistant professor, adjunct instructor, clinical professor, professorial lecturer, associate clinical professor, associate professorial lecturer, assistant clinical professor, assistant professorial lecturer, lecturer, special lecturer, studio lecturer, clinical instructor, teaching fellow, fellow, and graduate teaching assistant.

3. *Visiting*: Professor, associate professor, and assistant professor.

4. *Research Staff*

Members of the research staff may be appointed, upon recommendation of the appropriate faculty and officers of the administration, as research professor, associate research professor, assistant research professor, and research instructor. Such appointments do not provide tenure.

II. Academic Freedom

A. A faculty member shall enjoy freedom of investigation subject only to legal restrictions and such guidelines as shall be recommended by the Faculty Senate and adopted by the University.

B. A faculty member shall enjoy freedom of expression. In the classroom a faculty member's exposition shall be guided by requirements of effective teaching. In speaking and writing outside the University a faculty member shall not attribute his personal views to the University.

III. Professional Responsibilities

A. Members of the faculty shall perform well their academic duties, strive for professional development, and apply their talents to the service of their professions and their community.

B. Members of the faculty shall not permit their research to interfere with their teaching duties. In the classroom they shall be responsible for the character of the instruction, the maintenance of good order, and the observance of University regulations. Faculty members shall make adequate preparation for their classes and conduct them in a dignified, courteous manner. They shall meet classes on time, hold classes for the full period, grade tests and examinations and report the grades promptly, and report promptly to the appropriate dean matters requiring disciplinary action and matters relating to the

physical condition of classrooms and laboratories.

C. Members of the faculty shall perform their other academic duties conscientiously: they shall attend faculty meetings, commencement exercises, convocations, and other academic events; serve on faculty or university committees; assist in the administrative work of their departments and in the general administrative work of the University; and serve as general or departmental advisers to students.

D. Members of the active status faculty shall strive to grow in professional competence by means of effective teaching and sound scholarship. They shall strive for the advancement of knowledge in their fields by individual research and by participation in the activities of professional societies.

E. Regular active status members of the faculty shall have the primary responsibility of devoting their time, thought, and energy to the service of the University. No such member of the faculty shall accept an outside teaching appointment during the academic year or engage in any other regular activity of a remunerative nature without the approval of the University. Even when officially approved, such employment shall not be permitted to interfere with a faculty member's responsibility to the University.

IV. Appointment, Reappointment, Tenure, and Promotion

A. APPOINTMENT AND TENURE

1. *Statements of Terms and Conditions*

a) New faculty appointments shall be made by a letter signed by the appropriate corporate officer of the University. The appointee may accept the appointment by signing a copy of the letter of appointment and returning it to the University. A copy of this Code and the Procedures for the Im-

plementation of the Faculty Code shall accompany or precede the letter of appointment and shall be considered part of the agreement between the faculty member and the University.

b) Tenured members of the faculty and faculty members whose appointments do not expire or whose appointments will be renewed shall be notified in writing annually, on or about April 1, of salary and of changes in rank or of other terms and conditions of service for the next academic year.

2. *Limited Service Appointments*

All appointments to limited service active status (as defined in Article I, Section B, Paragraph 2) shall be for a specified period of a year or less. Such appointments may be renewed an unlimited number of times.

3. *Regular Appointments Without Tenure*

a) All appointments or reappointments to regular active status positions shall be for a specified term except for those that confer tenure.

b) The total of such terms, including all full-time service with the rank of instructor or higher in this or other recognized institutions of higher learning, shall not exceed seven years, provided that:

1) Leaves of absence to engage in authorized teaching or research activities at another institution shall be included in this seven-year period.

2) Leaves for study toward a degree, leaves for military or for personal reasons, and defense leave shall not be included in this period.

3) A faculty member with more than three years' previous full-time service at another institution may be appointed at any rank below that of professor without tenure for four years.

4) Members of the faculty who are stationed at affiliated institutions and assigned to educational programs of the Medical Center may be appointed for more than seven years without tenure.

c) Letters of appointment to positions that will not normally lead to the consideration of the appointee for tenure shall include a statement to that effect.

d) A faculty member of the rank of assistant professor or higher who will not be granted tenure at the end of the final year of his or her maximum term of appointment shall be so notified in writing no later than June 30 preceding the year in which his or her appointment will expire in accordance with Article V, Section B, hereof. Any such faculty member who is not so notified shall acquire tenure at the end of the term.

4. *Stated Periods by Rank*

a) *Instructors*

Instructors shall be appointed for an initial period of one year and may be reappointed for not more than three additional one-year periods. No reappointment shall, except by special action of the Board of Trustees, upon recommendation by the appropriate faculty body and the appropriate University officers, extend any individual's total period as an instructor beyond four years. Tenure shall not be conferred at this grade.

b) *Assistant Professors*

Assistant Professors shall be appointed for a period of not more than three years and may be reappointed, with or without tenure, for one or more additional periods.

c) *Associate Professors*

Associate Professors shall be appointed for a period of not more than four years and may be reappointed, with or without tenure, for one or more additional periods.

d) Professors

Professors may be appointed with tenure, or for a period of not more than three years without tenure.

B. PROMOTION

1. Promotion shall be dependent upon professional competence as evidenced by teaching ability, productive scholarship, participation and leadership in professional societies, service to the University, and public service.

2. As general practice a promotion shall be accompanied by an appropriate increase in salary.

3. Each school, college, or comparable educational division shall establish and publish criteria on which promotion will be based. Additional criteria that may exist in departments shall also be published. Each department or nondepartmentalized school or college shall establish and publish the procedures followed for making decisions concerning promotions.

4. Each department or school shall establish procedures for periodically informing faculty members whether they are making satisfactory progress toward promotion.

C. NONDISCRIMINATION

Appointments, renewals, terminations, promotions, tenure, compensation, and all other terms and conditions of employment shall be made solely on the basis of merit and without regard to race, color, religion, sex, national origin, or other considerations prohibited by law.

V. Termination of Service

A. EXPIRATION OF DEFINITE PERIOD APPOINTMENTS

All appointments for a definite period of service expire automatically with the comple-

tion of such period of service, subject, as appropriate, to the safeguards specified in this Article and in Article IV.

B. TERMINATION OF NON-TENURED APPOINTMENTS

1. *Notice of Nonrenewal of Appointment*

Written notice that an appointment is not to be renewed shall be given to a regular active status faculty member in advance of the expiration of his or her appointment, according to the following minimum periods of notice:

a) Not later than March 1 of the first academic year of faculty service in the University in the case of a one-year appointment;

b) Not later than December 1 of the second academic year of such service in case of a two-year appointment or the renewal of a one-year appointment;

c) Not later than June 30 preceding the final academic year after two or more academic years of service in the University.

2. *Notice by Member of Termination or Declination of Renewal*

A member of the faculty who desires to terminate an existing appointment or to decline a renewal shall give notice in writing no later than April 1 if the faculty member's rank is instructor or assistant professor, and no later than March 1 if the rank is higher, or within thirty days after receiving notice of the terms and conditions of service for the next academic year, whichever date is later; but the faculty member may properly request a waiver of this requirement in case of hardship or in a situation which might entail the denial of a substantial professional advancement.

3. *Dismissal and Late Notice*

Dismissal of a faculty member during a non-tenured appointment, or the nonrenewal of

an appointment with less than the required advance notice, shall be preceded by a statement of reasons and shall be subject to the provisions of Article X of this Code.

C. TERMINATION OF TENURE

Grounds for termination: Until retirement of a faculty member in accordance with other provisions of this Code, and subject to the provisions of Article X, an appointment with tenure shall be terminable by the University only for adequate cause, termination of program, or on account of extraordinary financial exigency, in the latter two cases after not less than twelve months' notice to the faculty member.

1. *Adequate Cause*

Adequate cause shall mean unfitness to perform academic duties because of:

- a) incompetence;
- b) lack of scholarly objectivity or integrity;
- c) persistent neglect of professional responsibilities under this Code;
- d) gross personal misconduct that destroys academic usefulness.

2. *Termination of Program*

The University may occasionally be required to terminate the appointments of tenured faculty members as a result of the termination of an entire instructional program because of a substantial decline in enrollments in the program or because of the expiration of grants, contracts, or other sources of funding on which the program's financial viability depends.

3. *Extraordinary Financial Exigency*

The University may occasionally be required to terminate the appointments of tenured faculty members because of extraordinary financial exigency. This drastic measure shall be considered only as a last resort, after every effort has been made by the

University administration and the Board of Trustees to meet the need in other ways.

4. *Obligations of the University*

a) Tenured faculty members shall not be dismissed because of termination of their program or extraordinary financial exigency until every effort has been made to place them in suitable positions elsewhere in the University.

b) If an appointment with tenure is terminated because of termination of a program or an extraordinary financial exigency, and, within two years, the program is reinstituted or funds become available to restore the position, the released faculty member's place shall not be filled until he or she has been offered and declined reappointment.

c) Faculty members whose tenured appointments are terminated because of the termination of their program or because of an extraordinary financial exigency shall be provided severance payment of one year's salary beyond the date of termination of employment.

VI. **Leave**

A. At any time, for study or for any other valid reason, a leave of absence without salary may be granted to a member of the faculty by the appropriate corporate officer.

B. When circumstances permit, the Board of Trustees shall grant sabbatical leave to a member of the faculty with tenure who has served six or more continuous years in a college or university in regular active status, three years of which must have been served in this University, or who has served six or more years in regular active status after a preceding grant of sabbatical leave. The request for sabbatical leave must be accompanied by an outline of the education, research, and/or self-improvement program

which the applicant proposes to follow if the leave is granted. Such leave must be recommended by the department or other appropriate unit, concurred in by the appropriate administrative official of the corresponding college or school and the Provost, approved by the President of the University, and granted by the Board of Trustees of the University.

By accepting a grant of sabbatical leave, faculty members obligate themselves to continue in the service of the University for at least one year following their leave unless the University agrees to some other arrangement.

When faculty members are eligible for sabbatical leave but for reasons of college, school, or departmental convenience or necessity have their leave deferred, their next eligibility for sabbatical leave shall be computed from the time they became eligible for such leave, not from the date the leave was actually granted.

The University shall pay members of the faculty while on sabbatical leave one-half of their salary for two semesters or all of their salary for one semester. (The salary is paid as a compensation for the benefits received by the University from the efforts of the faculty member on leave.)

C. In the event of a national emergency, regular active status faculty members will be granted defense leave in accordance with the following provisions:

1. Members of the faculty given defense leave for the duration of an emergency will have the privilege of returning to the service of the University at the beginning of the semester following their release from service.

2. Members of the faculty on defense leave in a civilian status may be requested to

return to the University and their defense leave terminated on sixty days' notice.

3. The return to University service of members of the faculty from defense leave is conditioned upon their mental, moral, and physical competence to resume their positions in the University.

VII. Retirement

A. Members of the faculty shall retire at the end of the fiscal year in which they reach the age of 65, provided that the Board of Trustees may continue such a faculty member under annual contract upon the recommendation of the faculty members who would be entitled to vote if the retiring faculty member were being considered for an original appointment in his or her present rank and with the approval of the appropriate officers of the University. For the purposes of this Article the fiscal year shall be taken as the period beginning July 1 and ending June 30.

Subject to the need of the University, a full-time member of the faculty who is retired may be invited by the appropriate officers of the University to continue on a part-time basis and appointed for a renewable period not to exceed one academic year. Such appointee shall be designated "emeritus (or retired) in residence."

In no case shall an appointment under the two preceding paragraphs be renewed beyond the end of the fiscal year in which the appointee reaches the age of seventy.

B. A member of the faculty with long and distinguished service to the University may, upon retirement, be awarded emeritus status. Emeritus status is recommended by the regular active status members of the faculty concerned and, with the concurrence of the administration, is awarded by the Board of Trustees. Those eligible for

consideration for emeritus status are professors, adjunct professors, clinical professors, research professors, associate professors, and associate clinical professors.

Faculty members in emeritus status shall be entitled to use facilities as arranged with the administration of the University and to participate in faculty meetings without the right to vote. They may serve on committees and may perform such other services as are in keeping with their desires and with the needs of the University.

C. A retired faculty member may use facilities as arranged with the administration of the University and participate in faculty meetings without the right to vote.

VIII. Retirement Annuity

The University has entered into an agreement with the Teachers Insurance and Annuity Association, which agreement is organized upon a dual participation basis. Full-time members of the faculty are eligible to participate.

IX. Faculty Role in University Decision Making

A. The regular active status faculty shares with the officers of the administration the responsibility for the effective operation of the departments, schools, colleges, and the University as a whole. In the exercise of this responsibility, the regular active status faculty plays a role in decisions on the appointment and promotion of members of the faculty and the appointment of the President, deans, departmental chairmen, and other administrative officials with authority over academic matters. The regular active status faculty also participates in the formulation of policy and planning decisions affecting the quality of education and life at the University. This participation includes an active role in the development,

revision, and elimination of the curricular offerings of each department, college, or school by its regular active status faculty. The regular active status members of the faculty of a college or school are also entitled to an opportunity to make recommendations on proposals concerning the creation, consolidation, or elimination of departments, institutes, or other academic or research units making up a part of that college or school. The Faculty Senate or an appropriate committee thereof is entitled to an opportunity to make recommendations on proposals concerning the creation, consolidation, or elimination of schools, colleges, or other major components of the University.

B. The faculty cannot perform an effective and responsible role in University decision making without the cooperation of the administrative officers of the University. This cooperation includes the provision of such information as is necessary to the development of sound, well-informed recommendations. Faculty bodies charged with responsibilities for particular policy and planning areas are entitled, to the extent feasible, to be informed sufficiently in advance of important decisions within their areas of competence to be able to provide their advice or recommendations to the appropriate University officials.

X. Principles Governing Issues Relating to Termination, Dismissal, Nonrenewal, Conditions of Employment, and Rights and Privileges Under This Code

The rights, privileges, and responsibilities of a faculty member conferred by this Code shall be carefully safeguarded in accordance with the highest accepted principles, practices, and procedures of the academic community. An alleged infringe-

ment of such rights or privileges or an alleged violation of such responsibilities, or a charge of unfair or discriminatory treatment based on race, color, religion, sex, national origin, or other considerations prohibited by law with regard to conditions of employment shall first be considered by the faculty member or members concerned, or by appropriate representatives of the faculty, in cooperation with the responsible administrative officers. If such consideration does not lead to an adjustment satisfactory to the parties involved, the procedures for the implementation of this Article shall be fully utilized.

XI. Health Service

A. The University, recognizing the importance of the health of the teacher to professional competence, shall contribute to the cost of the current and any future basic health care program for all members of the faculty.

B. The facilities of the Emergency Room are available to members of the faculty in emergencies resulting from accidents or sudden, serious illness while on campus.

XII. Construction

As used in this Code and the Procedures for Implementation, words that may imply the masculine gender shall be construed to refer to both the masculine and the feminine genders.

XIII. Effective Date

Having been approved by the Board of Trustees of the University on October 21, 1976, this Code shall as of October 21, 1976, supersede all former codes and ordinances. The Board of Trustees of the University directs that this revised Faculty Code be published.

PROCEDURES FOR THE IMPLEMENTATION OF THE FACULTY CODE

A. GOVERNANCE OF DEPARTMENTS, SCHOOLS, AND COLLEGES*

The regular active status faculty and tenured limited service faculty of each department, school, college, or comparable educational division shall establish written procedures for the governance of that unit.

B. FACULTY PARTICIPATION IN ACTION CONCERNING FACULTY MEMBERSHIP

1. The regular active status faculty of the rank of assistant professor or higher of a department or of a nondepartmentalized school or college or comparable educational division shall, subject to such limitations or guidelines as may be established by the faculties of the respective schools or colleges, establish procedures enabling an elected standing committee or a committee of the whole to submit its recommendations for appointments. Recommendations for actions other than appointments concerning instructors, assistant professors, or associate professors shall be determined by the tenured members of the faculty of higher rank or of equal and higher rank, as the faculty may have determined by previously established procedures. Recommendations for actions other than appointments concerning professors shall be determined by tenured members of the rank of professor.

2. Appointments and actions affecting renewal of appointments, promotion, tenure designation, and termination of service shall normally follow faculty recommenda-

*In the governance of the Medical Center all faculty eligible for membership in the Medical Center Faculty Assembly shall be eligible to participate whenever the term "regular" faculty appears in this document.

tions. Departures from this standard shall be limited to those cases involving compelling reasons. The appropriate administrative officer shall notify the Executive Committee of the Senate of any departures from faculty recommendations and the compelling reasons therefor. The faculty or the appropriate unit thereof shall also be notified unless the Board of Trustees determines that such notification would be contrary to the best interests of the individual or individuals concerned.

3. Faculty recommendations concurred in by the appropriate administrative officers shall be transmitted by them to the President, who shall transmit them to the Board of Trustees. Variant or nonconcurring recommendations from an administrative officer, together with supporting reasons, shall be sent by that officer to the Executive Committee of the Senate through the appropriate superior administrative officers. The Executive Committee may seek information and advice and make recommendations to the faculty or the appropriate unit thereof and to the appropriate administrative officers. If concurrence cannot be obtained after opportunity for reconsideration in the light of the recommendations of the Executive Committee, the recommendation of the appropriate administrative officers, accompanied by the recommendation of the faculty and the report of the Executive Committee, shall be transmitted to the Board of Trustees through the President.

C. FACULTY CONSULTATION AND RECOMMENDATION IN THE SELECTION OF ACADEMIC ADMINISTRATIVE OFFICERS

1. *Department Chairman*

The regular active status faculty members of a department of the rank of assistant professor and higher shall, subject to such limitations or guidelines as may be established by the faculties of the respective schools or

colleges, formulate procedures for making recommendations for filling vacancies in the post of department chairman. The procedures shall provide for an elected committee of the regular active status members of the department, or an appropriate inter-departmental committee, to recommend a candidate for the position. Normally the appointment shall be made in accordance with the recommendation. Should the appointing official not concur with the committee's recommendation, that official shall so inform the department concerned and shall indicate the reasons therefor. The committee shall, after consultation with the appointing official, make alternative recommendations until a nomination acceptable to both the department and the appointing official is reached.

2. *Dean, Associate Dean, Assistant Dean, and Similar Academic Administrative Officers*

a) The academic administrative officers, such as deans, associate deans, assistant deans, Vice President for Medical Affairs, or other academic administrative officers of similar rank of a college, school, or other academic unit shall be qualified for faculty membership by training and experience.

b) Appointments to such positions shall be made only after a special or standing committee elected by the regular active status faculty involved from among the faculty's tenured members has established criteria (subject to the approval of that faculty as a whole), considered nominations, and reported its recommendations in accordance with the procedures established under Section A, above, to the faculty which elected it or to the appropriate academic administrative officer.

c) Such appointees shall hold office only as long as they retain the confidence of the faculty concerned. A formal proceeding to

question the continued confidence of the faculty of a school or college in an academic administrative officer shall be instituted only after faculty members have made a reasonable effort to bring the substance of their concerns to the attention of such officers informally. The formal proceeding shall be conducted as follows:

1) A petition signed by one-third of the regular active status members of the rank of assistant professor or higher of the faculty concerned shall be submitted to the Chairman of the Executive Committee of the Faculty Senate.

2) The Chairman of the Executive Committee shall call a special meeting of the faculty concerned for consideration of the matter. The meeting shall be held within twenty days on which classes are regularly held in the University of the time the petition is submitted. Notice of the meeting shall be given to all of the faculty members eligible to vote on the matter.

3) The Chairman of the Executive Committee shall preside over the meeting. At this meeting procedures for balloting shall be determined.

4) Within ten days on which classes are regularly held in the University of the first special meeting, a secret ballot of the regular active status faculty of the rank of assistant professor or higher shall be taken at a special meeting or by mail on the question of confidence in the administrator involved. The balloting shall be supervised by the Executive Committee of the Faculty Senate.

5) The affirmative vote of a majority of the faculty members eligible to vote shall be necessary for the passage of a vote of no confidence. If the resolution passes, the Chairman of the Executive Committee shall forward the results of the proceedings to the President of the University for appropriate action.

3. Vice President for Academic Affairs, Associate or Assistant Vice Presidents for Academic Affairs

Appointments to the position of Vice President for Academic Affairs or Associate or Assistant Vice President for Academic Affairs shall be made only after consultation with the Executive Committee of the Faculty Senate. The Executive Committee may submit names of proposed candidates for these positions and may advise concerning names proposed by administrative officers. Appointees to these positions shall be qualified for faculty membership by training, experience, and continued interest in teaching and research. They shall retain office only as long as they retain the confidence of the Faculty Assembly.

4. Other Administrative Officers

a) The faculty of a school, college, division, or other organizational unit or group of units shall be consulted for their recommendations regarding the appointment of administrative officers whose concern with academic matters is limited to that unit or group of units. The regular active status faculty members of the rank of assistant professor and higher of the organizational unit or units concerned shall establish procedures and criteria for the formulation of such recommendations.

b) The Executive Committee of the Faculty Senate shall be consulted for its recommendations regarding the appointment of administrative officers whose concern with academic matters comprehends all or substantially all of the University.

5. President of the University

The Faculty Assembly shall elect a committee to advise and consult with the Board of Trustees or appropriate members thereof in the selection of a President.

D. FACULTY PARTICIPATION IN ACTION CONCERNING CURRICULUM

The regular active status faculty members of the rank of assistant professor and higher of each school or college shall establish procedures for their participation, directly or through elected standing committees, in decisions relating to the addition, revision, or elimination of curricular offerings.

E. PROCEDURES FOR IMPLEMENTATION OF ARTICLE X OF THE FACULTY CODE

1. *Grievance Committee*

a) The Faculty Senate shall elect a Grievance Committee of fifteen tenured active status faculty members, no more than three of whom shall be members of the faculty of any one school or college (except that four may be members of the faculty of Columbian College) and none of whom may be serving as academic administrators. The members of the Committee shall serve three-year staggered terms, so that the terms of five of the members shall expire each year. The Faculty Senate shall designate the Chairman of the Committee from among the members of the Committee.

2. *Preliminary Proceedings*

a) Before instituting any formal proceedings concerning an alleged violation of the Faculty Code, the aggrieved party or parties shall exhaust all reasonable efforts to achieve a resolution of the situation through informal consultation with the appropriate faculty members and administrative officers.

b) If informal consultation fails to resolve the matter, the aggrieved party shall refer the dispute to the Faculty Senate by means of a letter addressed to the Chairman of the Executive Committee. The Senate shall appoint a special mediation committee of three members, none of whom shall be members of the Grievance Committee; and

this mediation committee shall conduct an informal investigation of the matter and attempt to effect a mutually satisfactory resolution.

c) The special committee shall submit a report to the Faculty Senate, with copies transmitted to the parties, when it has either achieved a mutually satisfactory resolution or concludes that further efforts at mediation would be futile. The report shall include, if appropriate, the committee's evaluation of, or recommendations concerning, any university, college, school, or departmental policies or practices involved in the dispute.

3. *Formal Proceedings*

a) Commencement of Proceedings

1) If the preliminary proceedings do not result in a mutually satisfactory resolution of the dispute, any party to the dispute may commence formal proceedings by means of a complaint addressed to the Chairman of the Grievance Committee, with copies sent to the Chairman of the Executive Committee of the Faculty Senate and the other party or parties.

2) The complaint shall set forth with particularity the nature of the dispute, the identity of the remedy sought, and the reasons alleged to justify the remedy.

3) Within twenty calendar days of the receipt of the complaint, the other party or parties to the dispute shall reply in writing, sending copies of the reply to the Chairman of the Grievance Committee, the Chairman of the Executive Committee of the Faculty Senate, and the complaining party or parties.

4) The reply shall set forth with particularity the position of the replying party or parties with respect to each allegation of the complaint.

b) Hearing Committee

1) Upon receipt of the complaint, the Chairman of the Grievance Committee shall, with the advice of the Executive Committee of the Faculty Senate, appoint a Hearing Committee of three members from among the members of the Grievance Committee.

2) No member of the same department as a party shall sit on the Hearing Committee. Any party to a dispute may disqualify one member of the Hearing Committee by peremptory challenge. Any party may also seek to disqualify a member of the Hearing Committee for cause. The Grievance Committee shall hear and decide any challenges for cause. The Chairman of the Grievance Committee shall, from among the remaining members of the Grievance Committee, fill any vacancies on the Hearing Committee created by challenges.

3) When all challenges have been decided and vacancies filled, the Hearing Committee shall convene, establish a schedule for the hearings, and elect a chairman from among its members to preside during the formal proceedings.

4) All three members of the Committee shall be present during the hearings and the deliberations of the Committee except that the presence of one of them during part of the proceedings may be waived by agreement of the parties.

c) Procedure for Hearings

1) The parties to the proceedings shall be entitled to appear in person and to be represented by counsel or other adviser.

2) The Hearing Committee may, in its discretion, request that the Executive Committee of the Faculty Senate designate a member of the Law Faculty to serve as Committee Counsel to advise the Committee on

legal questions during the hearings and deliberations.

3) The procedure at the hearings shall be informal, but shall comply with the requirements of due process of law. The parties shall be entitled to testify on their own behalf, to call as witnesses any member of the University faculty and also any other person who is willing to testify, to present written and other tangible evidence, and to cross-examine witnesses called by other parties. Sworn depositions may be received in evidence when opposing parties have been given reasonable opportunity to appear and cross-examine the deponent. A party shall be entitled to inspect and copy, in advance of the hearing, any relevant documents in the control of another party and not privileged, and may offer such documents or excerpts therefrom in evidence.

4) The parties shall be entitled to present opening and closing statements.

5) A stenographic record of the hearings shall be made and one copy, which shall be available to all parties, kept on file by the University.

6) The hearings shall be open to the public unless, on the motion of a party or the Hearing Committee, the Hearing Committee shall determine that it is in the best interests of the University and the parties that the hearings be closed.

7) At the conclusion of the taking of evidence and the hearing of arguments, the Committee shall deliberate and reach its decision in closed session. The vote of a majority shall be determinative.

8) The Hearing Committee shall render its findings and recommendations in a written report which shall state the number of members subscribing to the report and shall include dissenting opinions, if any. This report shall be submitted to the Chair-

man of the Executive Committee of the Faculty Senate and copies shall be transmitted to the parties.

4. *Appeals*

a) Any party may appeal the decision of the Hearing Committee by filing a notice of appeal with the Chairman of the Grievance Committee and sending copies thereof to the Chairman of the Executive Committee of the Faculty Senate and to the other parties. The notice of appeal must be filed within ten days of the receipt of the decision of the Hearing Committee.

b) An appeal shall be heard by those members of the Grievance Committee who were not members of the Hearing Committee provided that members of the Committee who were disqualified from sitting as members of the Hearing Committee and members of the same department as any of the parties shall not participate in the hearing of the appeal.

c) The parties to an appeal shall be entitled to present written and oral argument.

d) The Grievance Committee shall render an opinion in writing, sustaining, modifying, or remanding the decision of the Hearing Committee. Copies of the opinion shall be transmitted to the parties and the Chairman of the Executive Committee of the Faculty Senate.

5. *Disposition*

When the time for filing an appeal has expired without an appeal having been commenced, or when the appeal process has been completed and a final decision has been rendered, the record of the case, including the decisions of the Hearing Committee and the Grievance Committee, shall be transmitted to the President and the Board of Trustees for final disposition.

F. PROCEDURES FOR THE DISMISSAL OF A FACULTY MEMBER FOR ADEQUATE CAUSE

1. *Commencement of Proceedings*

a) Proceedings to dismiss a tenured faculty member for adequate cause may be commenced by a complaint, addressed to the Chairman of the Grievance Committee, signed by the Vice President for Academic Affairs and either the dean or the department chairman who has administrative responsibility for the faculty member concerned. The complaint shall set forth the grounds alleged to constitute adequate cause for dismissal. A copy of the complaint shall be delivered in hand to the faculty member concerned or shall be sent by registered mail to the faculty member's residence. A copy of the complaint shall also be sent to the Chairman of the Executive Committee of the Faculty Senate.

b) Proceedings may also be commenced by a petition, setting forth the grounds alleged to constitute adequate cause for dismissal and signed by a majority of the tenured faculty of the school or college of the faculty member concerned, or twenty tenured members of that faculty, whichever is the lesser. A copy of the executed petition shall be delivered in hand to the faculty member concerned or sent by registered mail to his residence. Copies shall also be sent to the Chairman of the Grievance Committee, the Chairman of the Executive Committee of the Faculty Senate, and the Vice President for Academic Affairs.

c) Within twenty calendar days of the receipt of the complaint, the faculty member concerned shall reply in writing, sending copies of the reply to the Chairman of the Grievance Committee, to the Chairman of the Executive Committee of the Faculty Senate, and to the Vice President for Academic Affairs. The reply shall set forth with particularity the responding faculty

member's position with respect to each allegation of the complaint.

2. Hearing Committee

a) Upon receipt of the complaint, the Chairman of the Grievance Committee shall, with the advice of the Executive Committee of the Faculty Senate, appoint a Hearing Committee of six members from among the members of the Grievance Committee.

b) No member of the same department as the faculty member concerned and no one who has signed a petition seeking that faculty member's dismissal shall sit on the Hearing Committee. The faculty member concerned may disqualify two members of the Hearing Committee by peremptory challenge and may also seek to disqualify a member of the Hearing Committee for cause. The Grievance Committee shall hear and decide any challenges for cause. The Chairman of the Grievance Committee shall, from among the remaining members of the Grievance Committee, fill any vacancies on the Hearing Committee created by challenges.

c) When all challenges have been decided and vacancies filled, the Hearing Committee shall convene, establish a schedule for the hearings, and elect a chairman from among its members to preside during the formal proceedings.

d) All of the members of the Hearing Committee shall be present during the hearings and the deliberations of the Committee except that the presence of one of them during part of the proceedings may be waived by agreement of the parties.

3. Procedure for Hearings

The procedure for the hearings shall be the same as provided in Part E of these Procedures, except that the hearing shall be closed on the motion of the faculty member

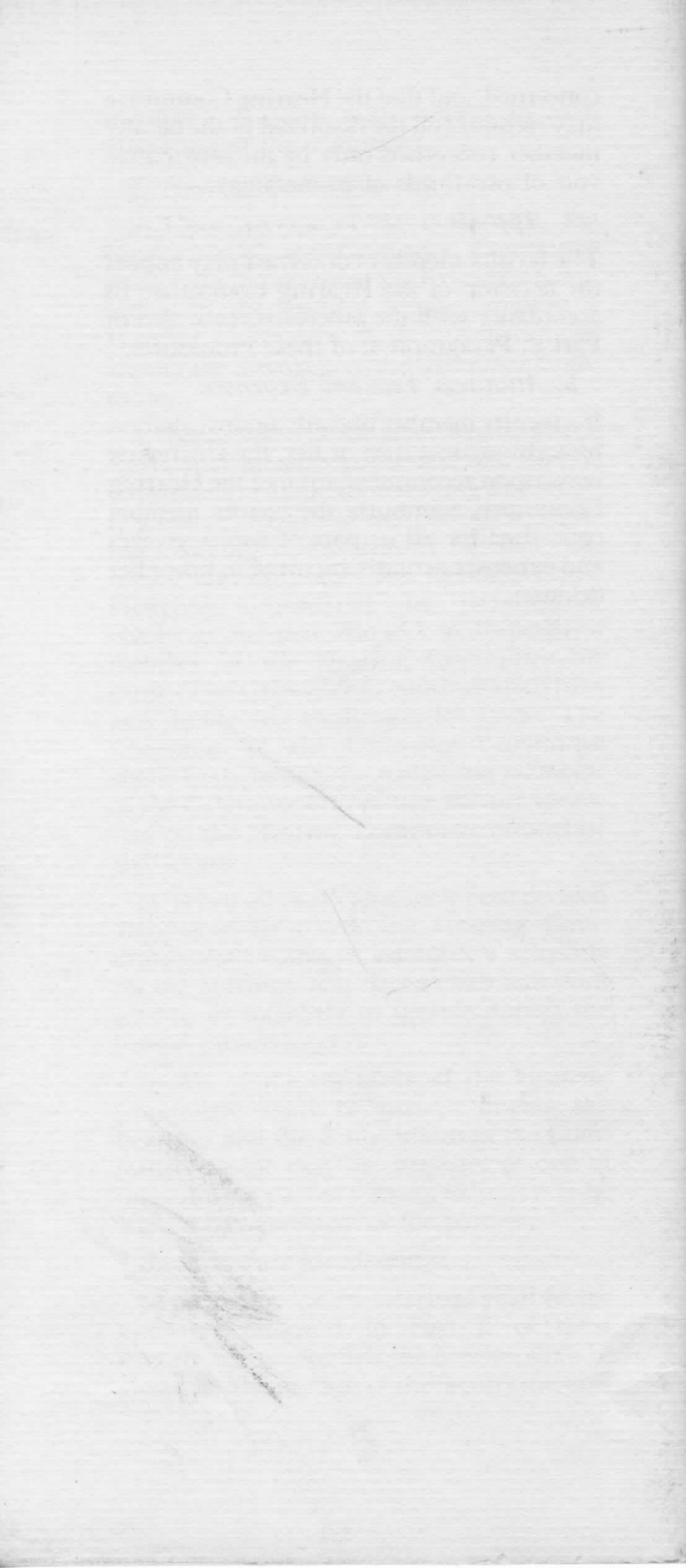
concerned, and that the Hearing Committee may recommend the dismissal of the faculty member concerned only by the affirmative vote of two-thirds of its members.

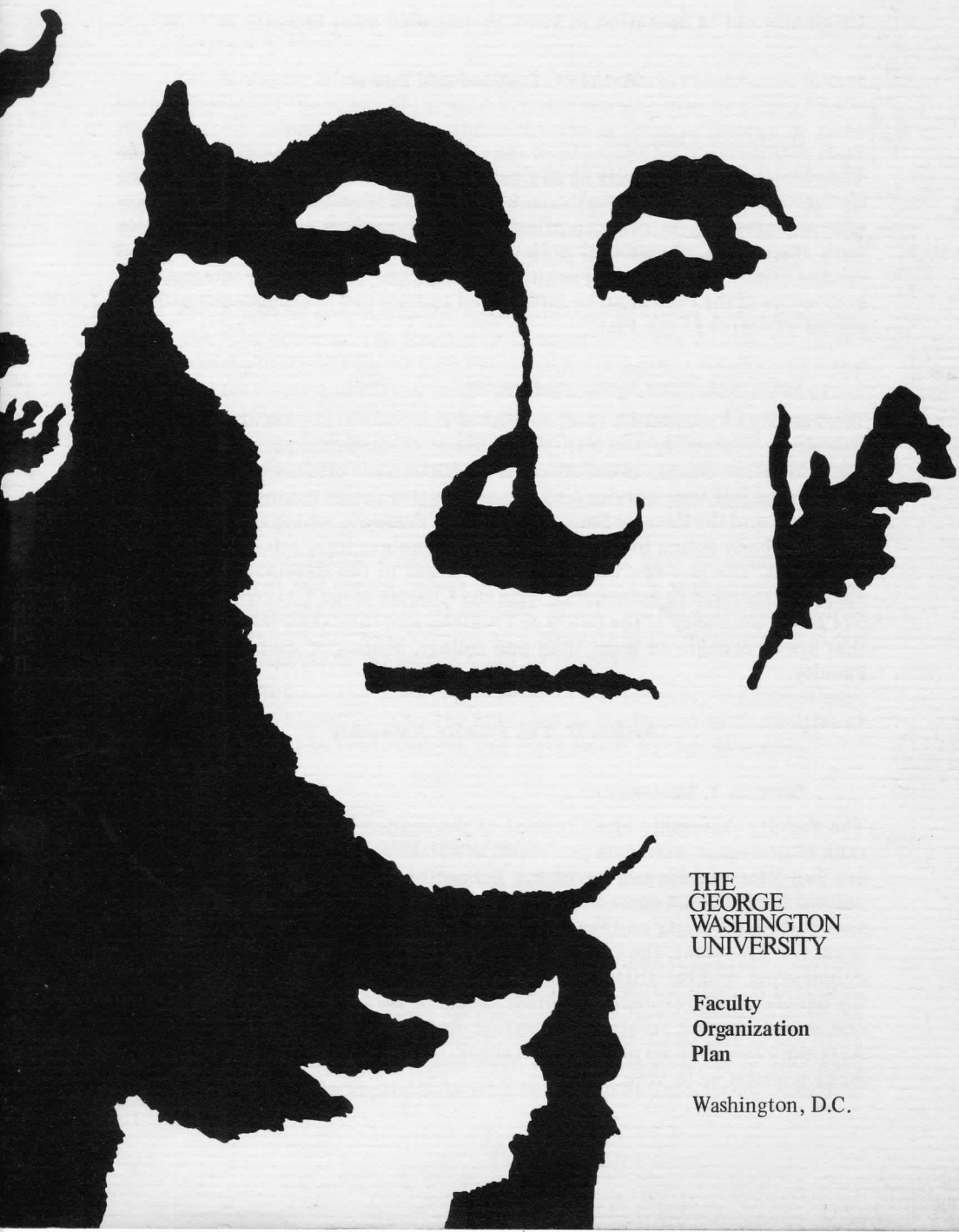
4. Appeals

The faculty member concerned may appeal the decision of the Hearing Committee in accordance with the procedures provided in Part E, Paragraph 4, of these Procedures.

5. Attorneys' Fees and Expenses

If a faculty member prevails against charges brought against him or her, the University may, upon recommendation of the Hearing Committee, reimburse the faculty member concerned for all or part of attorneys' fees and expenses actually incurred in his or her defense.





THE
GEORGE
WASHINGTON
UNIVERSITY

Faculty
Organization
Plan

Washington, D.C.

THE GEORGE WASHINGTON UNIVERSITY FACULTY ORGANIZATION PLAN

Originally put in operation in 1960; as amended most recently in 1976.

Article I. Purpose and Power

SECTION 1. OBJECTIVE

The objective of the Faculty Organization Plan is to enable the Faculty of The George Washington University, in keeping with sound principles of university organization, to perform effectively its functions and responsibilities with respect to educational policy and objectives of the University and related affairs in which the Faculty has a legitimate concern or interest. The provisions of the Plan shall be interpreted and applied in accordance with the stated objective of the Plan.

SECTION 2. STRUCTURE AND POWERS

The Faculty Organization shall consist of two bodies: the Faculty Assembly (hereafter "Assembly"), which shall consist of academic personnel holding the rank of professor, associate professor, assistant professor, or instructor who are in full-time service and the administrative personnel provided for hereafter; and the Faculty Senate (hereafter "Senate"), which shall be a representative body acting for the Faculty as the whole in legislative and advisory capacities. The powers, duties, and privileges of the Assembly and Senate shall be exercised in accordance with the Charter of the University and subject to the authority of the Board of Trustees, and they shall relate to matters that are of concern to more than one college, school, or division, or to the Faculty.

Article II. The Faculty Assembly

SECTION 1. MEMBERSHIP

The Faculty Assembly shall consist of the academic personnel holding the rank of professor, associate professor, assistant professor, or instructor who are full-time employees, or in the School of Medicine the equivalent as defined in affiliation agreements, of a degree-granting college, school, or division of the University and the President, the Vice President for Academic Affairs, the Treasurer, the University Librarian, the Registrar, the Director of Admissions, and the officers of administration appointed by the President to the Senate. Vice presidents and other academic personnel in full-time service, and professors and associate professors emeriti, may attend meetings of the Assembly and shall be privileged to speak; but they shall not have the right to make motions or to vote.

SECTION 2. OFFICERS

The President shall be Chairman of the Assembly, the Vice President for Academic Affairs shall be the Vice Chairman, and the Registrar shall be the Secretary.

SECTION 3. MEETINGS

(a) A regular meeting of the Assembly shall be held at least once during each semester of the academic year. A regular meeting may be called by the President, by request of the Senate, or by the petition of twenty or more members of the Assembly; and the agenda as prepared by the President shall include any matter requested by the Senate or by the Executive Committee of the Senate, or by petition of fifteen or more members of the Assembly. The call of a regular meeting shall contain the time, place, and agenda of the meeting; and it shall be mailed not later than the tenth day preceding the day of the meeting.

(b) A special meeting of the Assembly may be called by the President or by the Chairman of the Executive Committee of the Senate, or in the absence of the President by the Vice President for Academic Affairs, or by any of these at the request of fifty or more members of the Assembly, for any time and place, giving as much notice as the circumstances permit. The agenda for a special meeting shall be prepared by the person calling the meeting, in consultation with the Executive Committee of the Senate as far as practicable.

(c) A quorum for any meeting shall consist of 125 members of the membership of the Assembly.

(d) The Assembly shall act by affirmative vote of a majority of members present and voting, unless the action proposed is in adverse review of action taken by the Senate in which case the affirmative vote of two-thirds of members present, or one representing a majority of the membership of the Assembly, whichever is the lesser, shall be required.

(e) The Bylaws and rules of procedure of the Assembly shall be subject to the provisions hereof and shall be prepared by the Executive Committee of the Senate, subject to confirmation and amendment by the Assembly.

SECTION 4. FUNCTIONS

The functions of the Assembly shall be to:

(1) Receive information from the President, and such members of the University administration as he may designate, of matters of general University interest or faculty concern;

(2) Receive reports from the Senate as to actions it has taken and the activities of its committees, and, to the extent then anticipated, its proposed agenda and committee programs for the future. The Assembly shall have the power to direct the Senate to include in the agenda of the Senate or any of its committees, or to study and report back to the Assembly, or to take such other action as may be appropriate with respect to any matter of concern to

the Assembly. The Assembly shall also have the power to review any action taken by the Senate and take such action on the basis thereof as the Assembly may deem appropriate;

(3) Act as a referendum body on questions referred to it for that purpose by the Senate.

Article III. The Faculty Senate

SECTION 1. FUNCTIONS

The Faculty Senate, on behalf of the Faculty, shall, with respect to matters which are of concern to more than one college, school, or division, or to the Faculty:

(1) Formulate principles and objectives and find facts, so as to recommend policies to the President;

(2) Provide the President and the Board of Trustees with advice and counsel on such matters as they may request;

(3) At the direction of the Assembly—or may, at the request of the faculty of any college, school, or division, or of individual faculty members, or on its own initiative—consider any matters of concern or interest to more than one college, school, or division, or to the Faculty, and make its recommendations or otherwise express its opinion with respect thereto, to the Assembly, the President, or through the President to the Board of Trustees;

(4) Be the Faculty agency to which the President initially presents information and which he consults concerning proposed changes in existing policies or promulgation of new policies.

SECTION 2. ORGANIZATION

(a) Membership

(1) The President shall be a member of the Senate ex officio, and he or another presiding officer may vote to break a tie vote.

(2) Persons who are otherwise eligible for election to and service in the Senate shall be members of the University and shall not be in a probationary status. Questions of eligibility for election and service shall be determined by the Senate.

(3) The faculty members of the Senate shall be elected by and from their faculties as follows: Columbian College of Arts and Sciences, nine; the Schools of Education, Engineering and Applied Science, Government and Business Administration, Medicine, and the National Law Center, three each; and the School of Public and International Affairs and the Graduate School of Arts and Sciences, one each. The faculty members shall be professors, associate professors, or assistant professors in full-time service who have tenure as of the academic year next succeeding the date of election. Vice presidents, assistant vice presidents, deans, vice deans, associate deans,

assistant deans, and other faculty members whose duties are primarily administrative in nature shall be ineligible for election as faculty members of the Senate.

(4) The administrative members of the Senate shall consist of the Vice President for Academic Affairs, the Registrar, and a number of officers of administration equal to the number of degree-granting colleges, schools, and divisions. Administrative members shall have the right to debate but not to make motions or vote. They shall be appointed by the President and shall serve until their successors shall be appointed, but not less than one semester unless their service is terminated by separation from the University.

(b) Officers

The President shall preside at meetings of the Senate, and in his absence, the order of succession to preside shall be the Vice President for Academic Affairs and the Chairman of the Executive Committee. The Registrar shall be Secretary of the Senate. The Bylaws may provide for other officers of the Senate.

(c) Terms of Office

The term of office for faculty members of the Senate shall be two years beginning with the first regular Senate meeting in March of the year of election. If necessary, the terms shall be adjusted by the Executive Committee, with the consent of the Senate, so as to elect approximately one-half of the faculty members each year.

SECTION 3. ELECTION OF FACULTY MEMBERS

The election of faculty members of the Senate shall be held subject to the following requirements but otherwise pursuant to procedures determined by the faculty members eligible to vote in the school or group involved:

(1) The nominating procedure shall permit nominations from the floor or by petition in addition to any other method adopted by the faculty of the school or group involved, and shall, unless otherwise determined at or prior to the election meeting by a two-thirds vote of such faculty, require at least two nominees for each Senate seat to be filled.

(2) Voting shall be by secret ballot.

(3) Only members of the faculty in full-time service shall be eligible to vote, except that, in the case of the School of Medicine, all members of the Executive Faculty shall be eligible to vote for Senate members.

(4) The elections shall be held at meetings called by the academic deans of the respective schools prior to February 15 of each year. A quorum shall be that number which is determined by the faculty of the individual school, college, or division as the quorum required for its regular faculty meetings.

(5) In the event that a vacancy occurs in the Senate membership or a member is on leave of absence or otherwise unable to participate for any period, the faculty of the school or group involved shall be entitled to elect

another representative for the remainder of the term or pro tempore for the period of absence involved.

SECTION 4. MEETINGS

(a) Regular meetings of the Senate shall be held at stated intervals as determined by it but no less often than twice during each semester of the academic year. Special meetings may be called by the President, acting on his own initiative, or upon the request of the Executive Committee or the Assembly or the petition of 25 per cent of the elected members of the Senate.

(b) A quorum shall consist of the next whole number greater than one-half of the faculty members. All power of the Senate shall be exercised by the affirmative vote of a majority of the faculty members present and voting, except where the Bylaws require an extraordinary majority for particular business.

(c) The agenda for any meeting shall be made available in writing by the Secretary of the Senate to all members of the Senate at least seven days prior to the meeting in the case of regular meetings, and with the call in the case of special meetings, and shall be made available for inspection by all members of the Assembly. If, at any regular meeting, any item of business is deemed sufficiently urgent by a majority of the faculty members of the Senate, or by two-thirds of the faculty members present and voting, whichever is the greater, action may be taken with regard thereto by the Senate at such meeting without its previous inclusion in the agenda.

(d) A summary of the minutes of each meeting shall be furnished by the Secretary of the Senate to all members of the Assembly and such administrative officers as the President shall designate. A copy of the full minutes shall be made available by the Secretary for inspection by any such member or officer.

(e) Except as otherwise provided herein, or required by the Assembly, the Senate may adopt such bylaws and other rules concerning its government and procedures as it considers appropriate.

SECTION 5. COMMITTEES

(a) General

There shall be three kinds of Senate committees: the Executive Committee, standing committees, and special committees. The Executive Committee and all standing committees shall meet as directed by the Senate, or as determined necessary by the committees themselves or their chairmen, but not less than once a year. Committee meetings shall be conducted according to orderly procedure, records of deliberations shall be kept, and reports shall be made to the Senate as often as required, but at least annually. Copies of all formal reports shall be filed with the Secretary and shall be available for inspection by members of the Assembly and the administrative officers of the University. Members of the Executive Committee and standing committees shall be

elected for a term not exceeding one year. No member of the Executive Committee shall immediately succeed himself more than twice. The Senate shall establish such procedures for temporary replacement of members of the Executive Committee as shall seem necessary to assure that the Executive Committee would not be prevented from acting effectively in emergencies because of inability to assemble a quorum of its membership.

(b) The Executive Committee

The Executive Committee shall consist of five faculty members of the Senate and the President ex officio. Any faculty member of the Senate shall be eligible to be elected Chairman of the Executive Committee. The Chairman shall be elected by the Senate. The Senate shall also elect the other four elective members of the Executive Committee subject to the restriction that no two of them shall have been elected to the Senate by the same school or faculty group. The Committee shall:

(1) Arrange the agenda for Senate meetings, and shall serve as the channel through which any member of the Assembly may introduce matters for the consideration of the Senate. It shall include in the agenda for any meeting any matters requested by the President or by 20 per cent of the members of the Senate;

(2) Serve as the committee on committees for the Senate and in that capacity nominate the members and chairmen of the standing and special committees and the nominating committee for the members and Chairman of the Executive Committee. Individual faculty members of the Senate shall have the right to make additional nominations, by petition to the Executive Committee or nominating committee prior to the election meeting, or from the floor at such meeting. In the event of any question or dispute as to the jurisdiction of any standing or special committee, the matter shall be referred to the Executive Committee for resolution;

(3) Assist in carrying into effect the actions of the Assembly and the Senate, and make regular progress reports with respect thereto to the Senate;

(4) Prepare and submit progress reports and reports on the work of the Senate, and on any other matter directed by the Senate, to the President and to the Assembly. At the end of each academic year, a report covering the entire year shall be prepared and distributed to all members of the Assembly;

(5) Receive reports prepared by or in any college, school, or division of the University which may be of concern or interest to any other college, school, or division, or the faculty generally, and arrange for distribution of copies thereof to such other college, school, or division, or the faculty;

(6) Act on behalf of the Senate in emergencies on matters requiring immediate action when it is not feasible to call a special meeting of the Senate, such action to be reported to the Senate for confirmation at its next regular meeting.

(c) Other Committees

(1) The committees of the Senate shall have power to inquire, hear,

deliberate, advise, assist, and administer, and to receive and propose resolutions regarding all matters within the functions of the Senate set out in Section 1. of this Article. Advice given and action taken by Senate committees shall be reported to the Senate annually, or as otherwise required by the Senate.

(2) The name, membership, scope, and duties of each standing committee of the Senate shall be set down in the Senate Bylaws. The majority of voting members of every standing committee shall be members of the Faculty in full-time service. Special committees may be established by the Senate, and subcommittees may be established by the Senate or by its committees, and special committees and subcommittees shall be composed of such members as the Senate or its committees may provide. The chairman of every standing committee shall be a faculty member of the Senate, and every Senate committee and subcommittee shall include at least one faculty member of the Senate.

(3) The Senate may elect any person to membership in any Senate committee. The President may appoint to nonvoting membership in any standing or special Senate committee any officer of administration whose duties fall within the committee's scope.

Article IV.

1. Amendments to this University Faculty Organization Plan may be proposed to the Assembly by the President, by the Senate through petition to the President as Chairman of the Assembly, by 100 of the faculty members of the Assembly, or by a faculty committee as hereinafter provided. Voting on a proposed amendment by the Assembly may be at a regular or special meeting. For adoption of a proposed amendment by the Assembly a favorable vote of either two-thirds of those voting, or a majority of the voting members of the Assembly, whichever is the lesser, shall be required. Amendments so adopted shall be submitted to the Board of Trustees for its approval and shall become effective only when so approved.

2. After this University Faculty Organization Plan has been in effect for two years, it shall be subjected to automatic review and reappraisal by a faculty committee established specifically for that purpose. Such committee shall be composed of two representatives from the faculty (in full-time service and not officers of administration) of each school or faculty group then represented in the Senate. At least one such representative from each school or group shall not then be a member of the Senate. The committee shall prepare a written report for distribution to every member of the Assembly, and shall have the authority and responsibility through such report to propose amendments to the Faculty Organization Plan. Such proposals (if and to the extent approved by the Assembly) shall be submitted to the President for transmission to the Board of Trustees for its approval and shall become effective only when so approved.

3. The procedure described in the preceding paragraph for automatic review and reappraisal of the Faculty Organization and for making and implementing recommendations for changes in it shall be repeated every four years. Elections of members of the second Faculty Organization Review Committee shall be held in the fall semester of the academic year 1968-1969, and elections of succeeding committees shall be held in the fall semesters of each successive fourth year. The Chairman of the University Senate's Executive Committee shall have the responsibility of seeing that elections are held as prescribed and of convening the initial meeting of the Review Committee.

APPENDIX I

*Rules of Procedure for Faculty Assembly Meetings

1. NOTICE OF MEETING. Notice of a meeting of the Assembly shall consist of the time and place of the meeting, the type of meeting, whether regular or special, the means by which the meeting has been called, and the Agenda prepared by the President; and the Secretary shall put the Notice in the University mails at least ten days (not including the meeting day) prior to the meeting day.
2. PRESIDING OFFICER. The President shall be Chairman of the Assembly and its presiding officer. In the absence of the President, the Vice President for Academic Affairs shall preside, and in his absence, the Chairman of the Executive Committee of the Faculty Senate.
3. ORDER OF BUSINESS. The ordering of business on the Agenda shall be done by the President, and matters may be taken up out of the announced order at the Chairman's discretion. A matter for debate which does not appear in the Agenda may be taken up only by a majority vote which suspends the Rules of Procedure for that matter.
4. MEETINGS. Attendance at meetings of the Assembly shall be confined to members, except as individuals are invited by the President to attend, and subject to the Assembly's right to declare the meeting closed to nonmembers by a majority vote.
5. DEBATE. Debate and amendments (including substitute motions) must be germane to the question being debated. In order to raise the issue of germaneness, a member may interrupt debate to call for a ruling by the Chairman, or the Chairman may raise the issue himself; and the Chairman's ruling on germaneness may be overturned only by a majority vote.
6. RULES OF ORDER. Except as otherwise specified in these Rules of Procedure, the Assembly shall govern itself according to *Robert's Rules of Order*. The Parliamentarian of the Senate shall advise the Chairman on points of order.

*Adopted by the Faculty Assembly September 13, 1966; minor editorial changes made in March 1971 to conform the text to 1970 amendments to the Faculty Organization Plan.

7. VOTING. The first vote on a question shall normally be by voice, and the Chairman shall announce the result. If the Chairman or three members call for a division of the Assembly, the Chairman shall appoint tellers and shall call for a show of hands, announcing the number of affirmative and negative votes. No secret ballot shall be taken except by notice in the Agenda.
8. ADOPTION AND AMENDMENT. The Rules of Procedure, having been prepared by the Executive Committee of the Senate according to Article II, Section 3. (e) of the Faculty Organization Plan, may be adopted by the Assembly by majority vote. The Rules may thereafter be amended as an ordinary matter of business after appearing on the Agenda and being adopted by majority vote.

APPENDIX II

*Bylaws of the Faculty Senate

Be it Resolved by the Faculty Senate of The George Washington University:

SECTION 1. MEETINGS AND SESSIONS

(a) A "regular meeting" of the Senate shall be held on the second Friday of October, November, December, January, February, March, April, and May. The Executive Committee may change the date of a regular meeting in unusual circumstances. The President may call a "special meeting" upon the request of the Executive Committee or upon the petition of 25 per cent of the elected members of the Senate.

(b) Meetings of the Senate shall be open for attendance and observation to all members of the Faculty Assembly, except that by a majority vote the Senate may declare an "executive session" which only elected and ex officio members may attend.

(c) The business year of the Senate shall be called a "session" and each session shall commence with the call to order of the regular meeting in March.

SECTION 2. ORDER OF BUSINESS AND AGENDA

(a) The order of business for regular meetings of the Senate shall be as follows:

- (1) Call to order
- (2) Approval of the minutes of the previous meeting
- (3) Special business; for example, matters postponed to this meeting

- (4) Resolutions reported out of Committees, with reports if any
- (5) Introduction of Resolutions
- (6) General business; for example, announcements, nominations, elections, appointments, and Committee reports unaccompanied by Resolutions
- (7) Brief statements
- (8) Adjournment.

(b) The Executive Committee shall include in the Agenda for any meeting any matters requested by the President or by 20 per cent of the members of the Senate. Arrangement of the Senate's business upon the Agenda within the above categories shall be the duty of the Executive Committee. Matters on the Agenda may be taken up out of order by a majority vote. Matters not on the Agenda may be taken up only by a suspension of the rules of order.

(c) The Agenda for a regular meeting shall be available to members in writing in the office of the Secretary, and a copy of the Agenda addressed to each member shall be put in the University mails, on the seventh day before the meeting day.

(d) The Agenda for a regular meeting shall be accompanied by copies of reported Resolutions scheduled for debate, including those which originate in Committees and have not theretofore been introduced, and copies of Committee Reports submitted with Resolutions.

(e) The Agenda for a special meeting shall be prepared by the Executive Committee and may be incorporated in the call for the meeting. The minutes of a special meeting shall be approved at the next regular meeting. No Resolution not on the Agenda for the special meeting shall be considered by the Senate.

SECTION 3. RESOLUTIONS

(a) A "Resolution" shall consist of a statement which, if adopted by the Senate, will announce the policy of the Senate with regard to some matter within its competence.

(b) A Resolution shall consist of these parts: the Title, the Preamble (if any), the Resolving Clause, and the Text. The Title shall briefly describe the content and purpose of the Resolution, which should be confined to a single topic; the Title shall commence, "A Resolution to (or for)" The Preamble, if any, shall describe the background of the Resolution. Following the Preamble, if any, and immediately preceding the Text shall appear this Resolving Clause: "Be it Resolved by the Faculty Senate of The George Washington University." The Text may set forth more than one policy, each policy being stated in a separate numbered section.

(c) In order to "introduce" a Resolution, a member shall read its Title and move its adoption, another member shall second the motion, and the first member shall present one copy to the presiding officer and one copy to the

*Established by Resolution Number 65-3, November 12, 1965, as amended to date by the Faculty Senate.

Secretary. The presiding officer shall then read the Resolution aloud and refer it to the Chairman of the Executive Committee for assignment to an appropriate Committee. Resolutions shall be numbered by the Secretary consecutively in the order of their introduction or reported as original Resolutions from Committees; for example, "Resolution No. 66-5"; and Resolutions may be referred to by number in the Minutes, in Reports, and in debate.

(d) The presiding officer shall declare a Resolution "adopted" by the Senate upon passage of its Resolving Clause and Text by a majority vote.

SECTION 4. COMMITTEE ACTION ON RESOLUTIONS

(a) A Resolution introduced at a meeting shall be assigned by the Chairman of the Executive Committee to an appropriate Standing Committee or to the Special Committee created by motion for the purpose. Resolutions may also be originated by Committees without prior introduction in a Senate meeting, and such Resolutions need only be reported by the Committee to become the business of the Senate. A Resolution assigned to a Standing Committee which is neither reported during the session nor attached to a Standing Committee's Annual Report shall be listed by the Executive Committee's Annual Report as "defeated in Committee," and the Resolution must be reintroduced or originated in a Committee in order to be taken up in a subsequent session. Resolutions assigned to Special Committees shall survive from session to session without Committee action.

(b) A Resolution shall be "reported" to the Senate for its action when the Committee's chairman presents a copy of the Resolution to the Chairman of the Executive Committee for inclusion on the Agenda. A Special Report of the Committee may accompany the Resolution.

SECTION 5. COMMITTEE REPORTS

(a) Committee Reports shall be of three kinds: Annual Reports, Final Reports, and Special Reports.

(1) Each Standing Committee and the Executive Committee shall submit an "Annual Report" of activities during the session. Resolutions attached to an Annual Report shall be the business of the Committee in the next session, and with the consent of the Committee's Chairman, the Resolutions may be put upon the Agenda of any meeting in the next session.

(2) Each Special Committee shall submit a "Final Report" to the Senate at the conclusion of its activities and shall, with submission of the Final Report, move to be discharged.

(3) A "Special Report" may be submitted by any Committee at any time, either in support of its reporting a Resolution, or by way of information to the Senate on the Committee's activities.

(b) A Committee Report must be adopted by a majority of the Committee and shall be submitted over the name of the Chairman, whether he con-

curs in the Report or not. The Chairman and members of the Committee may submit their separate views for attachment to the Committee Report over their separate names. A Committee Report shall be "submitted" when it is delivered in writing to the Chairman of the Executive Committee. Each Committee Report more than three double-spaced typewritten pages in length shall commence with a "Summary" not more than one such page in length for distribution to the Faculty Assembly.

(c) The submitted Committee Report shall be circulated to the members of the Senate and shall be included in the minutes at the next appropriate meeting, but it shall not be read aloud unless requested by a majority vote. No Senate action regarding a Committee Report as such shall be in order, whether to receive, adopt, or accept it. The appropriate manner of securing debate and adoption of a Committee's proposals shall be to frame them as Resolutions.

SECTION 6. VOTING

(a) Elected members of the Senate shall be the voting members, except as provided below to break a tie vote.

(b) A "majority vote" shall be one vote more than one-half of the elected members present and voting, and a "quorum" shall consist of one-half of the elected members; and if "one-half" equals a fraction, the number required for a majority vote or a quorum shall be the next higher whole number.

(c) Voting shall ordinarily be by voice, with the presiding officer calling for the Ayes and Nays and declaring the result; except that any member, elected or ex officio, may call for a division of the Senate.

(d) Voting in a division of the Senate shall ordinarily be by show of hands, with the presiding officer appointing nonvoting tellers and announcing the Ayes and Nays. In a division of the Senate the presiding officer may, when he announces a tie vote, vote orally to break the tie vote.

(e) Upon the call of six elected members a roll call vote shall be taken. The Secretary shall call the roll alphabetically, recording beside each name "Aye," "Nay," "Not Voting," or "Absent," and the presiding officer shall vote last and only if he wishes to break a tie vote between the Ayes and the Nays. The presiding officer shall announce all the results of a roll call vote.

(f) By a majority vote a secret ballot may be taken. The Secretary as teller shall record the Ayes and the Nays and inform the presiding officer, who shall announce them; and if there is a tie vote between the Ayes and the Nays, the presiding officer, if an ex officio member, may vote orally to break the tie.

SECTION 7. DEBATE

(a) The entry of a Resolution upon the Agenda as reported by a Committee puts that business before the Senate for debate, and no second or other motion is required. A spokesman for the position of the Committee, ordinarily

the Chairman, shall have the privilege of opening and closing debate on the merits.

(b) Debate and amendments must be germane to the Resolution or other motions, and rulings of the presiding officer upon calls for order of the question of germaneness shall be appealable to a majority vote.

(c) Upon request of an elected member, and upon a majority vote if demanded by any member, the privileges of the floor for a germane statement not to exceed ten minutes in length may be extended to any person.

SECTION 7A. STATEMENTS AND DISCUSSIONS

(a) At the close of all business brought before the Senate at a regular meeting, any member (or any other person, within the procedures set out in Section 7.(c)) may deliver a statement upon any subject within the competence of the Senate, and other members may join in discussion of the statement. Other statements and discussions may follow. A statement shall not be considered a resolution, and discussion of a statement shall not be considered debate. The order of appearance of persons delivering statements may be set in advance of the meeting by arrangement with the President and may, but need not, be set forth in the Agenda. The subjects of statements and motions of referral, but not the details of discussion, shall be noted in the minutes.

(b) A statement or discussion may be interrupted by the following motion: "I move to refer the subject to the Senate Committee on... (naming an appropriate committee)." Because a function of the motion is to terminate discussion of the subject, the motion shall be undebatable, and it shall be amendable only in respect of the committee designated.

SECTION 8. RULES OF ORDER AND PARLIAMENTARIAN

(a) Except as specifically provided to the contrary in the Bylaws, the Senate shall govern itself according to *Robert's Rules of Order*.

(b) A Parliamentarian shall be appointed at the first regular meeting of each session by the President with the advice and consent of the Senate. The Parliamentarian shall not be a member of the Senate. He shall advise on parliamentary procedure for meetings and shall assist in the drafting of Resolutions.

(c) Rulings announced by the presiding officer shall govern the Senate unless appealed and overruled by a majority vote. It shall be the duty of the Parliamentarian to frame issues of procedure as proposed amendments to the Bylaws.

SECTION 9. SUSPENSION OF THE RULES OF ORDER

(a) If at a regular meeting a Resolution is put in the hands of all the members in writing, one copy to each member, it may be taken up under a suspension of the rules of order if three-fourths of the elected members so

vote, or upon the unanimous vote of any lesser number of elected members present.

(b) Any matter within the competence of the Senate may be considered at a special meeting provided the Agenda rules for special meetings are complied with, but the rules of order shall not be suspended at a special meeting.

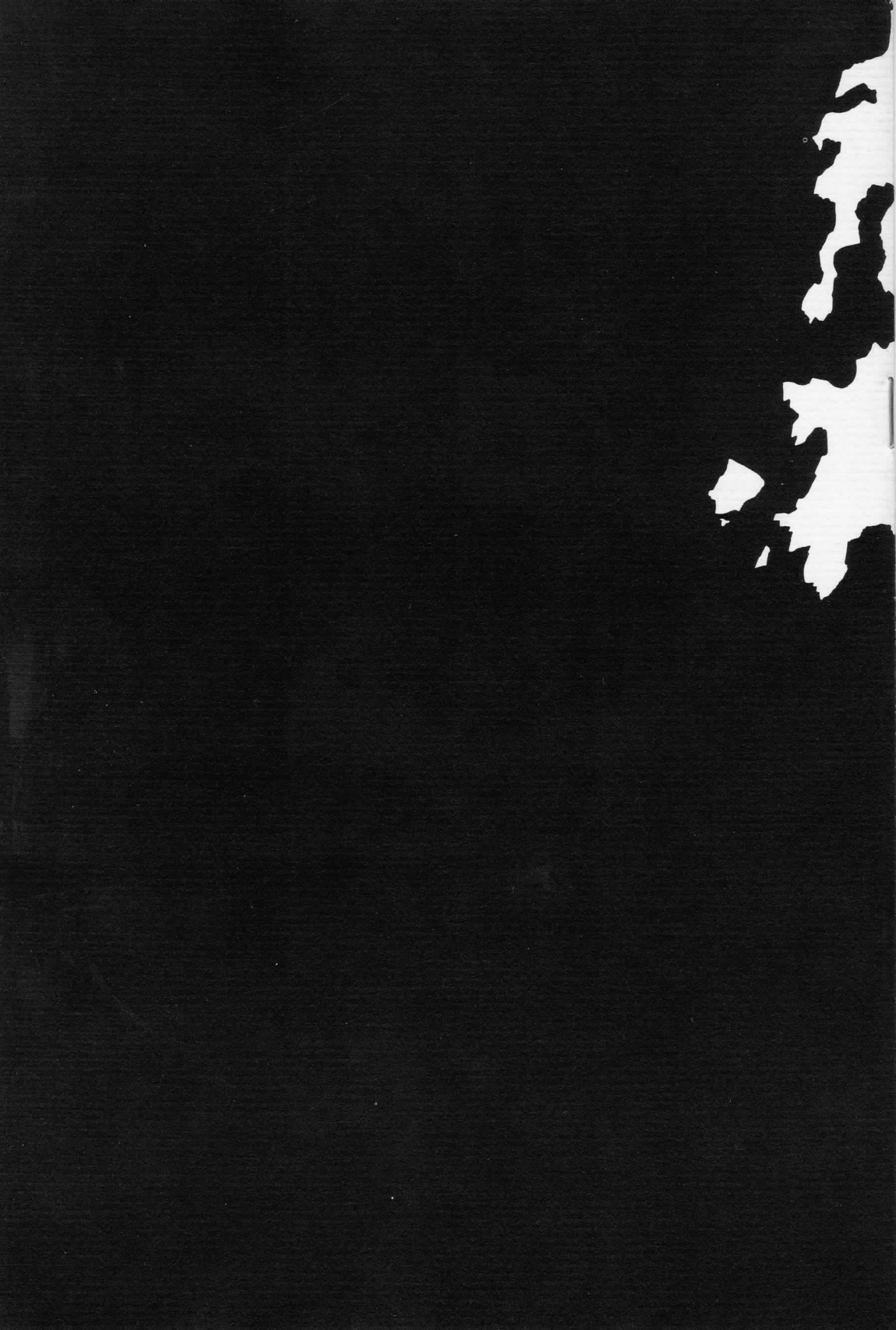
SECTION 10. AMENDMENTS

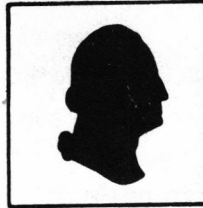
Amendments to the Bylaws may be introduced and referred to the Executive Committee, or they may be originated within the Executive Committee at the suggestion of the Parliamentarian, and they shall be treated as nearly as may be as Resolutions. Enactment shall be by a majority vote. Amendments shall not be considered under a suspension of the rules of order.

SECTION 11. STANDING COMMITTEES

There shall be standing committees for the following areas: Administrative Matters as They Affect the Faculty; Admissions and Advanced Standing; Appointment, Salary, and Promotion Policies; Athletics; Educational Policy; Fiscal Planning and Budgeting; Library; Physical Facilities; Professional Ethics and Academic Freedom; Public Ceremonies; Research; Student Financial Aid; University Development and Resources; University Objectives; and University and Urban Affairs.

Other standing committees created by the Senate shall continue in force.





*Special mailing
to FF & A and Bd.*

Faculty Senate

MEMORANDUM

August 20, 1979

TO: The Faculty

FROM: Reuben E. Wood, Chairman of the Executive Committee, Faculty Senate

REW

I am enclosing a number of documents relating to the litigation between the National Labor Relations Board (NLRB) and Yeshiva University (the University). In summary, the faculty of Yeshiva voted to form a labor union. The University refused to bargain collectively with the faculty union. NLRB took the University to court. The trial court found for the University on the grounds that the faculty exercised managerial and supervisory functions and, accordingly, the University was not required to bargain collectively with the faculty union or to bargain collectively with any union with which the faculty union might affiliate itself. NLRB appealed. The appeals court upheld the decision of the lower court. NLRB asked the Supreme Court to hear the case and it has agreed to do so.

Yeshiva University has now invited a number of universities to join in submitting a "friend of the Court" brief to the Supreme Court. G.W.U. is one of those universities.

On July 3, 1979, the Executive Committee of the Faculty Senate met at the request of President Elliott to advise him how to proceed. It turned out that our decision had to be made within a few days. Opinions were quite divided. However, four of us--Fred Amling, Gilbert Ginsburg, Howard Pierpont, Reuben Wood--were able to agree on the advice given in my memorandum to President Elliott dated July 4, 1979 (q.v.). Peter Hill dissented strongly.

I think it is important that members of the faculty familiarize themselves with the facts of this case because we shall presumably have the opportunity to adhere to or to reject the amicus curiae brief that is being prepared. And we may not have long to make up our minds. Perhaps the documents should be read chronologically beginning with Fred Vinson's letter to President Elliott of June 21, 1979.

Enclosures

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WASHINGTON
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Washington, D.C. 20052

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CABLE ADDRESS
READAV

June 21, 1979

Dr. Lloyd Elliott
President
The George Washington University
2121 Eye Street, N. W.
Washington, D. C. 20052

Dear Dr. Elliott:

As you know, the case involving Yeshiva University, in which the issue relates to the applicability of the National Labor Relations Act to a bargaining group of faculty, is now before the Supreme Court. Yeshiva University won the case below and in the Court of Appeals. When on appeal in the Second Circuit, I am told that some associations and some universities joined in an amicus curiae brief in support of Yeshiva. Yeshiva University is now trying to get a representative group of universities to join together in another amicus curiae brief to be filed in the Supreme Court. Mr. Bodner, counsel for Yeshiva, told me that Johns Hopkins University and New York University had already committed themselves to such a project and that they had requested University of Chicago, Yale and some far western university (in addition to The George Washington University) to join in also.

The universities agreeing to support Yeshiva's position by preparing and filing such a brief would incur legal costs not to exceed \$5,000 which would be divided among them, with no single university being responsible for more than \$1,000 of such costs.

While the issue is still open, the probability is that the same New York law firm which filed the amicus brief in the Second Circuit would be engaged by the consortium of universities to prepare a draft of brief for filing in the Supreme Court. Then each university would have the opportunity to have the brief reviewed by its counsel before permitting the brief to be filed on its behalf.

I am sure that Yeshiva intends for the work to be done this summer so that a petition for leave to file the brief (to which the brief is attached) can be filed before the Court opens in early October. You should understand that the Court may not agree to a brief being filed formally,

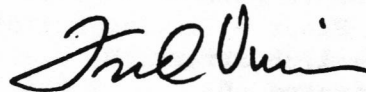
REASONER, DAVIS & VINSON

- 2 -

but at that time you would already have taken your position and, as a practical matter, the brief would be lodged with the Court as an exhibit to the petition for leave to file.

Because of the time table, the matter is somewhat urgent. Please let me hear from you as to whether the University wants to join in this endeavor so that I can return the call of Yeshiva University's counsel.

Sincerely,



Fred M. Vinson, Jr.

FMV:mfc

June 26, 1979

Mr. Fred M. Vinson, Jr.
Reasoner, Davis & Vinson
11th Floor - Fleming Building
800 - 17th Street, N. W.
Washington, D. C. 20006

Dear Mr. Vinson:

Thank you for your letter of June 21.

The case involving Yeshiva University and the subsequent request for The George Washington University to join in a Consortium which would file an amicus curiae brief in support of Yeshiva are matters now being considered by appropriate officers and faculty members here on campus. As soon as we have reached a decision I shall be back in touch with you.

Thanks again for your letter which puts our decision in perspective.

Sincerely,

Lloyd H. Elliott

LHE/jhr

In Brief

■ High Court to Decide Yeshiva Bargaining Case

The Supreme Court agreed last week to hear a case involving Yeshiva University that could decide whether faculty members at private universities have collective-bargaining rights.

Last summer a three-judge panel of the U. S. Court of Appeals for the Second Circuit ruled that the Yeshiva faculty had a "managerial" role in university decision-making and therefore was not entitled to bargain under federal labor laws. (See *The Chronicle*, Aug. 14, 1978.)

The decision was appealed to the Supreme Court by the National Labor Relations Board, which has held since 1971 that the law allows faculty members to be represented by unions.

In agreeing to hear the Yeshiva case, the Supreme Court did not indicate whether it would consider a similar case involving Boston University, in which the U. S. Court of Appeals for the First Circuit agreed with the N.L.R.B.'s position on faculty unionism.

CHRONICLE

of Higher Education

August 14, 1978 • \$1
Volume XVI, Number 23.

Court Rejects Bargaining by Professors

Ruling bars NLRB role
at a private university

By PHILIP W. SEMAS

A federal appeals court has issued a decision that could mean the end of faculty collective bargaining at private universities.

In a case involving Yeshiva University, a three-judge panel of the U. S. Court of Appeals for the Second Circuit overruled the National Labor Relations Board, which has held since 1971 that faculty members are employees entitled to collective bargaining rights.

The court said faculty members at Yeshiva were "managerial employees" not entitled to bargain under the federal labor law. It based its opinion on the role of Yeshiva faculty members in university decision-making, a role similar to that at many private universities.

The N.L.R.B. was considering last week whether to appeal the decision to the Supreme Court. The board has decided not to ask for a rehearing before the entire appeals court, an N.L.R.B. lawyer said.

If the decision is upheld by the Supreme Court, it would mean that private universities would not be required to negotiate with faculty unions, although they could do so if they wished. Faculty members on 77 private-college campuses have voted to unionize in the last seven years.

The decision does not directly affect faculty members on the more than 500

public-college campuses where faculty members are engaged in collective bargaining. Public colleges fall under the jurisdiction of state labor laws, not the National Labor Relations Act.

However, some observers suggested that the case could have an indirect effect on public-college unionism, especially if it reached the Supreme Court. State courts and labor boards often look to the N.L.R.B. and the federal courts for guidance on labor issues.

The Yeshiva decision was the first in which a federal appeals court had rejected the N.L.R.B.'s position on faculty unionism.

In 1975, the U.S. Court of Appeals for the First Circuit upheld an N.L.R.B. ruling that faculty members at Wentworth College of Technology had the right to unionize. At Wentworth, the court found, "there is no evidence of an instance of significant faculty impact collectively or individually on policy or managerial matters." However, the Fifth Circuit also indicated that it might rule differently in a case where faculty members had more power.

Likewise, in its ruling in the Yeshiva case, the Second Circuit left open the possibility that it might approve of bargaining for faculty members in cases like Wentworth's, where the record does not indicate that faculty members have a major role in decision making. The opinion, writ-

ten by Judge William H. Mulligan, a former dean of the Fordham University law school, noted that the case concerned a "mature" university, which might not be typical of all institutions of higher education.

In fact, Judge Mulligan said, the court had limited itself "solely" to the situation at Yeshiva.

However, the Yeshiva procedures cited in the opinion—the authority of faculty committees, senates, and other bodies over curriculum, hiring, promotion, salary, and tenure—are found at many major private universities.

The main legal issue in the case was whether university professors were "employees" under Section 2 (11) of the National Labor Relations Act. Yeshiva argued that faculty members were ineligible for collective bargaining because they were "supervisors" or "managerial employees."

The N.L.R.B. has acknowledged that college professors exercise some supervisory powers. However, the board has argued that, because they exercise those powers collectively, faculty members are still entitled to bargain collectively.

The court disagreed.

"Logically," Judge Mulligan said, "we see no reason that the fact that

the policies of a company are created by a group (as indeed they usually are by the Board of Directors) rather than by an individual should be of significance in determining whether an individual has managerial status."

Judge Mulligan was joined in the decision by Judges J. Edward Lumbard and William H. Timbers.

Unions Critical

Leaders of the three national organizations of faculty members were highly critical of the court's decision.

"We think it's an incorrect decision," said a staff member of the American Association of University Professors.

"It really turns its back on what the N.L.R.B. has said in a whole series of cases," said Robert Chanin, general counsel of the National Education Association.

Albert Shanker, president of the American Federation of Teachers, said the court "seems to have accepted at face value Yeshiva's definitions of supervisory and managerial functions."

Both the A.A.U.P. and the A.F.T. had filed "friend-of-the-court" briefs in the case, as had Boston, Fairleigh Dickinson, New York, and Northeastern Universities and the University of Vermont.

4 THE CHRONICLE OF HIGHER EDUCATION

Court's Ruling on Faculty Unionization

NEW YORK

Following is the text of the opinion of a three-judge panel of the U.S. Court of Appeals for the Second Circuit in the case of the National Labor Relations Board v. Yeshiva University.

The National Labor Relations Board (the Board) has applied for enforcement of its order of August 24, 1977, reported at 231 N.L.R.B. No. 98, requiring respondent Yeshiva University (Yeshiva) to recognize the Yeshiva University Faculty Association (the Union) as the exclusive bargaining agent of a unit of Yeshiva's full-time faculty members. The petition for enforcement of the Board's order is denied.

I

On October 30, 1974, the Union filed a petition under § 9(e) of the National Labor Relations Act (the Act), as amended, 29 U.S.C. § 159(c), for certification of a bargaining unit consisting of full-time faculty at Yeshiva University. In opposition Yeshiva contended that all its faculty members are managerial or supervisory personnel and hence not employees within the meaning of the Act. Alternatively, the University sought a unit consisting of all full-time and regular part-time faculty with certain exclusions for managerial or supervisory personnel. Between

November 26, 1974, and May 6, 1975, hearings were conducted before a Board-appointed hearing officer. On December 5, 1975, the Board issued its decision and direction of election, reported at 221 N.L.R.B. 1053.

The Board found that the Union was a labor organization within the meaning of the Act and that University faculty were professional employees and not managerial or supervisory personnel. The Board further found that department chairmen, assistant deans, and faculty members of certain committees with University-wide jurisdiction were neither managerial nor supervisory personnel. The Board concluded that a unit of full-time faculty was an appropriate bargaining unit.

In the election held pursuant to the Board's direction between December 16 and 20, 1976, the Union won by a substantial margin. On December 29, 1976, the Union was certified as the exclusive bargaining representative of the employees in the unit.

Yeshiva, however, refused to bargain with the Union and on February 2, 1977, the Board issued a complaint against the University under charges filed by the Union. Yeshiva opposed the complaint and a subsequent motion for summary judgment, again raising objections to the propriety of the NLRB's unit determination.

The University's position was rejected by the Board, which found

Yeshiva to be acting in violation of §§ 8(a)(5) and (a)(1) of the Act, as amended, 29 U.S.C. §§ 158(a)(5), (a)(1). The Board granted summary judgment against Yeshiva and ordered the respondent to bargain collectively with the Union. This proceeding was commenced by the Board on October 17, 1977, following Yeshiva's continued refusal to comply with its decision and order.

On this appeal, Yeshiva argues principally, as it did before the Board, that the full-time faculty of the University are managerial and/or supervisory employees within the meaning of the Act and are therefore excluded from the Act's coverage. Yeshiva also urges that two assistant deans and faculty who are departmental or divisional chairmen, or who are members of certain committees on University affairs, exercise additional authority which mandates their classification as supervisors and/or managers.

Before examining these contentions it is necessary to review the structure of Yeshiva and the role played by the faculty in the operation and governance of the University.

II

Yeshiva University is a private institution of higher education chartered under the laws of the State of New York. Its offices and educational facilities are located on four widely

separated campuses in New York City. We are here concerned with Yeshiva's six undergraduate colleges and programs, and four graduate schools. Approximately 2,500 full and part-time students are enrolled at Yeshiva. The University is staffed by 209 full-time and 150 part-time faculty members.

Yeshiva has a self-perpetuating Board of Trustees with no administrative position at the school apart from their membership on the Board. The University's chief executive officer is the President. There are, in addition, three vice-presidents at Yeshiva (for student affairs, business affairs, academic affairs) as well as a Bursar, Registrar, Director of Admissions and several University deans. An Executive Council of deans and administrators makes recommendations to the President with respect to various matters. Two other committees, the Council of Graduate Schools and the Council of Undergraduate Schools, advise the President and Board regarding interdivisional programs designed to increase coordination and cooperation among the schools and divisions of the University. These councils consist of elected student and faculty representatives from each school or division, the dean or director of each academic unit and members of the University administration, including the President. A Faculty Handbook sets forth University policies regard-

August 14, 1978

ing faculty appointments, promotion, tenure, termination and sabbaticals.

Each of the schools or divisions is headed by a dean or director. Most of the schools have a faculty assembly or student-faculty senate as well as a committee structure, including, *inter alia*, a curriculum committee, a standards committee, and a welfare committee. The faculty of each school meet periodically and at Stern College, Yeshiva College, and the Belfer and Ferkauf Graduate Schools the faculties meet and conduct their affairs according to written by-laws and/or constitutions which have been approved by the President. Only two of the schools, Yeshiva College and the Belfer Graduate School, have assistant deans. These two assistant deans are teaching faculty members.

Each school, college, and program at Yeshiva enjoys great autonomy in determining its own curriculum grading system, and academic standards as well as in a wide variety of other matters. Therefore the role of the faculty at Yeshiva can best be appreciated by a review of the individual academic units of the University.

1. Stern College for Women

At Stern College a Committee on Academic Standards, composed of the Dean of the College, Dean Mirsky, who retains his faculty rank, and six full-time faculty, fixes the academic requirements and decides whether a student whose performance is inadequate will be required to leave the school. Although Dean Mirsky recognizes that the decision to dismiss a student results in a loss of tuition income, he has never overruled the Committee. Similar committees composed predominantly of faculty members establish admission standards, determine graduation requirements, and set up grading systems. Upon the recommendation of a scheduling committee the faculty introduced a new scheduling model for the school. In response to growing budgetary limitations, a faculty committee on personnel and budget has made generally effective recommendations concerning elimination of elective courses, the establishment of joint courses, and other scheduling changes. In the 1969-70 academic year the Stern College faculty disagreed with a decision by Dean Mirsky and the Curriculum Committee to delete Stern's education major; Mirsky reinstituted the major. Indeed, a faculty dominated curriculum committee must pass on all program changes or changes in graduation requirements.

Department chairmen call to Mirsky's attention the need for new faculty members. Interviewing is done by the chairman and the Dean who then agree on an appointment. Dean Mirsky has never made a faculty appointment which was not ap-

proved by a department chairman. Similarly effective recommendations are made by department chairmen regarding termination of faculty members. Mirsky has only once disagreed with a department chairman with respect to a termination.

Promotion recommendations are solicited from department chairmen by a faculty Promotions Committee. The committee passes on its recommendation to Mirsky, who has always accepted the committee's decisions. The University President has granted the great majority of recommended promotions and has never overruled a negative recommendation.

Tenure recommendations are made both by Mirsky and the candidate's department chairman to the University President. All negative tenure recommendations by chairmen have been accepted both by Mirsky and by the administration. In only one instance has Mirsky disagreed with a chairman's positive tenure recommendation. Nevertheless, tenure was granted on that occasion.

2. Yeshiva College

At Yeshiva College a College Senate composed of faculty, administrators, students, and alumni members has jurisdiction over admissions policy, scholastic standards, the grading system, and other academic policy matters.

All measures passed by the Senate are subject to veto by the Faculty Assembly. The Dean of the College, Dean Bacon, who is also a professor of linguistics, testified that he feels compelled to see that decisions of the Senate and Assembly are executed. Moreover, not once in Bacon's sixteen years as Dean has the University President vetoed an action by either body. Bacon is aided by an assistant dean who teaches one course per semester.

Yeshiva College is divided into "subject areas," which are the equivalent of departments in other schools. The counterpart of the department chairman at Yeshiva College is the senior professor in the subject area. Subject areas are grouped into four broad divisions. One senior professor in each division serves as a "divisional chairman."

The divisional chairmen comprise the Advisory Council on Promotions. Recommendations on promotions by the Council have always been followed by the President of the University, although such recommendations have, at times, been in conflict with those made by Dean Bacon.

Senior professors screen applicants for faculty positions. Dean Bacon and the senior professor then jointly make the hiring decisions with Bacon generally accepting the recommendations of the senior professor. Indeed, the Dean has never appointed a faculty member over the objection of a senior professor and once sustained a senior professor's objection over the appointment desired by a University Vice-President for Academic Affairs. Dean Bacon

has given equal deference to the recommendations of senior professors regarding termination and reappointment of probationary faculty. Finally, senior professors largely determine the budget of their subject area. The budget requests of the senior professors receive perfunctory approval by Bacon "99 per cent" of the time and, during Bacon's tenure, had never been rejected by the University administration.

3. Erna Michael College

At Erna Michael College, admissions procedure, curricular matters, grading, scheduling and other questions of academic policy are subjects on which the faculty, through the faculty meeting, governs. The faculty has also implemented a basic restructuring of the College in which the number of academic hours required of students was substantially reduced. As a result, faculty at the College now teach fewer hours and teach a minimum of only three rather

binowitz of Erna Michael testified that he felt bound to institute even those faculty decisions with which he disagreed, such as the establishment of a trimester academic calendar. Neither Dean Rabinowitz nor any other member of the administration has ever vetoed a decision of the faculty on such issues.

Evaluation of faculty to determine whether retention or salary increase is warranted is often carried out at a meeting of faculty in the affected member's academic subject area and is led by the senior professor who, as at Yeshiva College, is the equivalent of a department chairman. At other times such evaluations are simply made by the senior professor. The role of the senior professors at Erna Michael regarding promotion and termination of faculty is very similar to that at Yeshiva College.

4. The Teacher's Institute for Women

The Director of the Teacher's Institute, Rabbi Faivelson, testified that the faculty had made effective recommendations regarding curriculum, admissions policy and degree requirements.

When the need for a new faculty member arises Rabbi Faivelson asks the faculty whether they have any objections to the applicants. Faivelson stated that if any faculty member has the slightest objection the applicant is not hired. On an occasion where Faivelson favored termination of a faculty member for budgetary reasons the faculty voted against the termination and the faculty member was retained.

Rabbi Faivelson once recommended that the Institute move to Brooklyn to attract better students. The faculty rejected the proposal and determined that the school would remain in Manhattan.

5. James Striar School

Director of James Striar, Rabbi Besdin, who carries a full-time teaching load, testified that faculty meet-

Court Ruling Continued from Preceding Page

ings are "in a great sense decisive as to the direction of the school." The faculty at James Striar have considered at their meetings administrative regulations, curriculum matters, and course offerings. Rabbi Besdin testified that he did not recall ever overruling a direct recommendation of the faculty. Indeed, he stated that on one occasion a majority of the faculty rejected his recommendation to retain a student guidance procedure, thereby "overruling" Besdin on the issue.

Part-time faculty hiring decisions are made by Besdin and the affected department chairman. Besdin has never hired a full-time faculty member without consulting the concerned department head.

6. The Yeshiva Program

Rabbi Charlop is the Director of the Yeshiva Program, which provides a course of study in Talmudic texts. There are no traditional faculty ranks at the Yeshiva Program. Rabbi Charlop testified that decisions affecting academic matters are made by a consensus of the faculty. In one instance the faculty decided to extend the academic calendar by two weeks and this decision was implemented.

7. Belfer Graduate School

Arthur Komar became Belfer's Dean in 1968 after the school's faculty successfully petitioned the President of the University for the removal of Komar's predecessor. Thereafter, Komar was elected Acting Dean by the faculty and he obtained a vote of approval from the faculty before accepting a permanent appointment as Dean. Komar, who was teaching one course at Belfer when he testified, stated that he viewed his position as Dean as "first among equals." Komar's assistant dean is a tenured assistant professor who teaches one course each semester.

At Belfer a Faculty Council deals with curricular problems, size of departments, and formation of new departments. It has even discussed the financial and wage policies of the school. The majority of the key decisions in the governance of Belfer, however, are made by the school's departments. The hiring of faculty members and the length of their appointments are determined by a majority vote of the department.

Dean Komar testified that his only role in hiring is his participation—like any other faculty member—in the discussion and voting on applicants to his department. Decisions

on promotion, tenure and non-renewal of faculty appointments are also made within each department by consensus. Komar stated that he does not believe he has the right to override such departmental decisions. Salary negotiations with new faculty are arrived at not by Komar but by department chairmen. The chairman's recommendations for salary figures are generally accepted by the Dean.

8. Ferkauf Graduate School

As at Belfer, faculty hiring decisions at Ferkauf are effectively made by consensus of the department. The Dean of Ferkauf, Dean Gittler, last taught a course in the semester prior to his testimony. He stated that he accepts "98 per cent" of faculty appointments recommended by the departments and the administration has never vetoed an appointment. Rank of appointees (and thus their salary) is also decided by the department.

Many other aspects of the school's operation are resolved by faculty committees. The Promotions Committee effectively determines questions of faculty promotions. In fact, a promotion has never been made in the face of a negative committee decision and only once in the past nine years has a positive committee recommendation not resulted in the faculty member's promotion.

Tenure questions are handled by the Faculty Council on Tenure. Neither Dean Gittler nor the administration has ever reversed a negative tenure decision of the Council. Only once has a positive recommendation not resulted in a grant of tenure.

Department chairmen at Ferkauf wield substantial budgetary power through the Chairmen's Council. Until the budget cutbacks of the last few years every aspect of the budget was deliberated by the Council. Similarly, tuition increases are never recommended by Dean Gittler unless the chairmen concur. Chairmen also establish, in consultation with their departments, the workload of the full-time faculty.

9. Wurzweiler School

The role of the faculty at Wurzweiler is very similar to that at Ferkauf. The acting Dean of Wurzweiler, Dr. Green, who retains his

faculty rank and was teaching two courses at the time of the hearings, testified that the internal operation of the school is "heavily governed" by faculty decisions. In addition to wielding great power on academic matters, the faculty has made decisions with serious budgetary consequences. For example, when Dean Green proposed a \$500 tuition increase the faculty disagreed and sought an increase of only \$300. The faculty's position prevailed. The faculty also made a decision to increase the size of the student body at Wurzweiler.

Faculty committees play a prominent part in the running of Wurzweiler. One such committee monitors the school's community social work program to insure compliance with the goals of the outside agency which funds the program. Thus the committee's oversight has an important affect on retention of the program's funds.

The hiring, promotions, termination, and tenure policies of the school were in a transitional state at the time of the hearings. Hiring was currently conducted by an *ad hoc* faculty committee which made a selection from candidates submitted by the dean, who accepted all committee recommendations. A personnel committee has drawn up guidelines for substantial expansion of the faculty's role in questions of promotion, termination and tenure.

While these guidelines have not been fully enacted to date, Dean Green confirmed that except for a minor clause which was contrary to provisions of the University's Faculty Handbook, the Wurzweiler faculty had authority to promulgate such guidelines, which were then binding on the dean.

10. Bernard Revel School

At the time of the hearings Revel had no permanent Dean. Dr. Leo Landman, Secretary of the Faculty, was currently overseeing the day-to-day operation of the school as well as teaching two courses. Landman testified that decisions on curriculum, admissions requirements, degree requirements, and course offerings were made by consensus of the faculty. Landman further stated that the

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Court Ruling

Continued from Preceding Page

faculty's decisions were generally given effect.

According to Landman's uncontested testimony, department chairmen at Revel made effective recommendations regarding both full and part-time faculty hiring. In fact, chairmen's negative recommendations in this area had always been upheld.

Two other important organs of University-wide faculty governance should be mentioned.

The Faculty Review Committee is composed of eight tenured faculty members who are elected from the various schools of the University. The Committee has jurisdiction to review faculty grievances, particularly those concerning promotion and tenure. If the grievance is not satisfactorily resolved after the Committee has notified the Dean of the interested school, the Committee is authorized to recommend action to the President.

Faculty members, along with students and administrators, also sit on a recently formed Committee on Academic Priorities and Resource Allocation. The purpose of this Committee is to provide a long-range scale of academic and fiscal priorities at Yeshiva. Hence, Dean Rabino-witz, a committee member, testified that the Committee is empowered to reevaluate the objectives of the

schools of the University, and to review class size, staffing patterns, physical facilities, tuition levels and fund-raising methods. It should be noted, however, that this committee at the time of the hearings had met only twice and had not focused upon particular problems nor made any specific recommendations.

III

The major issue raised in this case is whether the full-time faculty of Yeshiva are supervisors within section 2(11) of the Act, 29 U.S.C. § 152(11), and/or managerial personnel within the Board's own definition as adopted by the courts; and therefore whether these faculty members are improperly included as employees in the bargaining unit.

Section 2(11) defines a supervisor as follows:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or to effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well settled in the industrial context that possession of any one of the enumerated powers in section 2(11) or the power to effectively recommend with respect to any one of them is sufficient to satisfy the statutory definition of a supervisor. E.g., *NLRB v. Metropolitan Life Insurance Co.*, 405 F.2d 1169, 1177 (2d Cir. 1968); *NLRB v. Quincy Steel Casting Co., Inc.*, 200 F.2d 293 (1st Cir. 1952); *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir.), cert. denied, 338 U.S. 899 (1949).

Managerial employees are exempted from the coverage of the Act not by explicit statutory language but as a matter of Board policy and unanimous court approval. *NLRB v. Bell Aerospace Co., Division of Textron, Inc.*, 416 U.S. 267, 285-89 (1974). Employees who fall within this category include "those who formulate, determine, and effectuate an employer's policies." *Retail Clerks International Association v. NLRB*, 366 F.2d 642, 645 (1966) (BURGER, J.), cert. denied, 386 U.S. 1017 (1967). In *NLRB v. Bell Aerospace Co., Division of Textron, Inc.*, *supra*, the Supreme Court emphasized the mandatory nature of the exclusion of all employees found to be managerial.

[T]he Board's early decisions, the purpose and legislative history of the Taft-Hartley Act of 1947, the Board's subsequent and consistent construction of the Act for more than two decades, and the decisions of the courts of appeals all point unmistakably to the conclusion that "managerial employees" are not covered by the Act.

Id. at 289. The Court concluded that the Board "is not now free" to read a new and more restrictive meaning into the Act" by which certain managerial employees would be held to be within its coverage. Id.

The record, which has been set forth in some detail in Part II and which is not controverted by the Board, strongly supports the contention of Yeshiva that its full-time faculty, acting at times through committees or department chairmen, and at other times as a body, exercises supervisory and managerial functions as defined by section 2(11) of the Act and within the Board's prior holdings as discussed in *NLRB v. Bell Aerospace Co., Division of Textron, Inc.* We stress that our function is not to examine *in vacuo* the governance procedures of all four-year private institutions of learning described in the briefs of the *amici* universities as "mature" institutions of higher education. Many such institutions have apparently adopted a collegial decision-making process in which the faculty plays a decisive role in the development of institutional policy. Given the great diversity in governance structure and allocation of power at such universities it is appropriate to address ourselves solely to the situation at the institution involved in this proceeding. *NLRB v. Wentworth Institute*, 515 F.2d 550, 556 (1st Cir. 1975).

The record here discloses that in many instances the full-time faculty of the schools of Yeshiva without question effectively recommend the hiring, promotion, salary, and tenure of the faculty of the University in a manner which can hardly be described as routine or clerical. They further perform managerial functions not only by their personnel decisions but by adopting the standards of admission, the curriculum, the grading system and the graduation requirements of their school. Moreover, in particular cases the hiring of deans, the physical location of a school, teaching loads, and even the tuition to be charged were controlled by the full-time faculty.

Indeed, the ability of the full-time faculty effectively to recommend or even to exercise many of the enumerated powers of section 2(11) and to formulate and effectuate University policy is not really disputed here. The Board's decision of December 5, 1975, treated the issue summarily.

We find from our examination of the record, however, that the role and authority of the faculty herein with respect to hiring, promotion, salary increases, the granting of tenure, and other areas of governance are not significantly different from what they were in [previous Board decisions] wherein the same arguments were rejected. At Yeshiva University, faculty participation in collegial decision making is on a collective rather than individual basis, it is exercised in the faculty's own interest rather than "in the interest of the employer," and final authority rests with the board of trustees. (Citations omitted).

221 N.L.R.B. 1053, 1054 (1975). The Board concluded that "the faculty members are professional employees under the Act who are entitled to vote for or against collective-bargaining representation" and that a unit of full-time teaching faculty members was appropriate.

Thus, without any analysis the Board found that Yeshiva's full-time faculty were neither supervisors nor managerial personnel simply by stating that the substantial authority of the faculty was wielded in their capacity as professionals and by invoking three doctrines promulgated in earlier Board rulings.

Since we are unpersuaded that these four justifications for the Board's decision on this point withstand careful scrutiny, we will analyze them, *seriatim*, below.

A. The Full-time Faculty are Professional Employees.

Under section 2(12) of the Act, 29 U.S.C. § 152(12), a professional employee is specifically included within the Act's coverage despite the fact that in the performance of his work he must exercise consistent discretion and judgment. Yeshiva does not argue that its full-time faculty members are not professional within the statutory definition of that term. They are obviously engaged in work which is "predominantly intellectual," requiring advanced knowledge in a field of learning, and they do not perform work which is "routine mental, manual, mechanical, or physical" in nature.

However, the fact that employees are professional does not preclude them from also being categorized as supervisory or managerial employees ineligible for inclusion in a bargaining unit. See, e.g., *General Dynamics Corp.*, 213 N.L.R.B. 851, 860, 862, 863 (1974); *Westinghouse Electric Corp.*, *supra*, at 726; *American Oil Co.*, 155 N.L.R.B. 46, 48, 49 (1965); *Puget Sound Power & Light Co.*, 117 N.L.R.B. 1825, 1827 (1957).

Even in an educational setting, the Board in *University of Chicago Library*, 205 N.L.R.B. 220 (1973), *enfd.*, 506 F.2d 1402 (7TH CIR. 1974) and *Claremont Colleges*, 198 N.L.R.B. 811 (1972) excluded professional librarians from a unit of library employees because they supervised non-professionals.

Hence, it has been established by the Board's own decisions that simply because individuals are professionals under section 2(12), that status *per se* does not preclude their classification as supervisory or managerial personnel.

Whether, as a matter of policy, faculty members of institutions of higher learning are advantaged or disadvantaged by collective bargaining is an issue which has understandably created divergent views. But the Board, like the court, is bound both by the Act and by prior judicial interpretations of it. Unquestionably, a university full-time faculty member has the authority to determine the content of his course, the method he employs in teaching it, and the evaluation of his student's academic performance. *New York University, supra*, at 5.

These factors place such faculty members squarely within the language of section 2(12) and these attributes of professionalism should not characterize them as managerial or supervisory.

However, the issue as we perceive it in this case involves not simply the professor's exercise of discretion in conducting the courses he is employed to teach. Rather, the issue here is the extensive control of Yeshiva's faculty over what courses are taught in the institution, who teaches them, the number of teaching hours required of the faculty, and the rank, salary, and tenure status of other faculty members. We are further

concerned by the crucial role of the full-time faculty in determining other central policies of the institution including, *inter alia*, the curriculum, admissions and graduation requirements, tuition, and in one instance, even the situs of a school. When faculty members have such power—as the record indicates they do at Yeshiva—they no longer are simply exercising individual professional expertise. They are, in effect, substantially and pervasively operating the enterprise.

The Board relies in part on *General Dynamics Corp.*, *supra*, at 857-58, where it commented that a lawyer or a certified public accountant might well as a professional "cause a change in company direction or policy which is based upon his professional advice alone," and yet should not on that account be held a managerial employee.

However, we cannot reasonably equate the input of professionals in a profit-making commercial enterprise, whose advice based on their "technical expertise," *id.*, may influence management on occasion to implement policy changes, with that of the full-time university faculty, which is here largely responsible for the conduct and direction of an institution of higher education.

This is not the case of a company which hires an occasional scholar to guide it in making engineering, legal, or accounting decisions which have an impact on its business; this is the "company of scholars" itself.

It is well recognized that most university faculties enjoy a state of independence and influence on policy which is "entirely unknown among the professionals in private industry." Kahn, *supra*, at 68; accord, Sands, *The Role of Collective Bargaining in Higher Education*, 1971 WIS. L. REV. 150, 157. As Mr. Justice Cardozo noted: "By practice and tradition the members of the faculty are masters not servants. . . . They have the independence appropriate to the company of scholars." *Hamburger v. Cornell University*, 240 N.Y. 328, 336-37, 148 N.E. 539, 541 (1925).

Thus, while we readily concede that Yeshiva's full-time faculty satisfy the Act's criteria for professional status, we reject the Board's position that by the possession and exercise of the broad powers detailed in Part II of this opinion the full-time faculty at Yeshiva act only as professionals and not in a managerial or supervisory capacity.

B. The Full-Time Faculty Acts Collectively.

The Board here adheres to the view it first expressed in *C. W. Post Center of Long Island University*, 189 N.L.R.B. 904 (1971) and has reiterated in *Northeastern University*, 218 N.L.R.B. 247 (1975); *University of Miami*, 213 N.L.R.B. 634 (1974); *Adelphi University, supra*; and *Fordham University, supra*.

The Board's position is that since

the faculty's supervisory and managerial functions are exercised "on a collective basis" rather than by individual faculty members, they must be denied status as supervisory or managerial personnel. The Board's rationale is not adequately explained in this or in its prior opinions. Section 2(11) does, however, state that it is applicable to "an individual" who possesses the enumerated indicia of supervision.

Since the control here in issue is not that of individual faculty member over nonprofessionals, but the collective control exercised by the faculty either in concert, through department chairmen, or through faculty-dominated committees, it must be conceded that if read literally the statutory definition can be construed not to cover the full-time faculty.

Since students are not employees the individual faculty supervision over students does not fit within the statutory definition, which requires that the supervisory power be directed to employees. There is the further logical difficulty of holding that the supervisory employees supervise other supervisory employees, cf. *General Dynamics Corp.*, *supra*, at 859; *Post-Newsweek Stations, Capital Area, Inc.*, 203 N.L.R.B. 522 (1973), although this is somewhat defused when we consider that in many of Yeshiva's schools the full-time faculty also supervise collectively the activities of the part-time faculty.

Certainly, however, this Board interpretation is not the only reasonable reading of the language of section 2(11). In view of the statute's ambiguity we are disturbed by other holdings of the Board in which the collective exercise of supervisory authority was *not* grounds for exclusion from that status.

Thus in *Florida Southern College*, 196 N.L.R.B. 888, 889 (1972), a case decided after the Board's rulings in *C.W. Post, supra*, *Fordham University, supra*, and *Adelphi University, supra*, the Board excluded a teaching dean from the faculty bargaining unit because he sat on a committee which made effective recommendations regarding the hiring and firing of faculty members. See also *Western Saw Manufacturers, Inc.*, 155 N.L.R.B. 1323, 1329 N. 11 (1965) (foreman held a supervisor in part due to service on a board which determined employee termination).

The inconsistent interpretation of this provision by the Board is also troublesome in that the Board refers this court to no legislative history of the section—and our own review has uncovered none—which clearly supports the "collective authority" doctrine which the Board urges upon us. Rather, the history of section 2(11) indicates that such collective supervision simply was not actively considered by Congress at the time. See S. REP. NO. 105, 80TH CONG., 1ST SESS. 3-5 (1947); H.R. REP. NO. 245, 80TH CONG., 1ST SESS. 13-18 (1947); H.R. CONF. REP. NO. 510, 80TH CONG., 1ST SESS 35-36 (1947).

THE CHRONICLE OF HIGHER EDUCATION

by an individual should be of significance in determining whether an individual has managerial status, and the Board has advanced no satisfactory rationale for the weight it has given this factor.

C. The Faculty Acts on Their Own Behalf and Not in the Interest of the Employer.

As it has done consistently in the past, the Board here denied managerial or supervisory status to the full-time faculty on the additional ground that the faculty is alleged to be acting on its own behalf and not on behalf of Yeshiva, its employer.

The record in no way supports this proposition and in its argument the Board simply advances the conclusory statement that collegial action by peers is inherently action in the interest of the faculty themselves, not in the interest of the University *qua* employer.

Indeed, this is characterized in the Board's brief as a "circumstance peculiar to most institutions of higher learning." However, looking at the record one cannot escape the conclusion that even assuming that the faculty's determinations on personnel, curriculum, admissions, grading, graduation requirements, and other policy issues were motivated by the faculty's own best interests, the fact that the administration and Board of Trustees of Yeshiva so rarely interfered in the faculty decisions indicates that the interests of the faculty and of the University were almost always co-extensive. Cf. *NLRB v. Scott Paper Co.*, 440 F. 2d 625, 630 (1st Cir. 1971) (court rejected Board's argument that tractor owner-operators were not supervisors because authority not exercised in interest of employer company on ground that interests "were so intertwined that powers were exercised for both."); *Deaton Truck Line, Inc. v. NLRB*, 337 F. 2d 697 (5th Cir. 1964), cert. denied, 381 U.S. 903 (1965) (same).

Certainly, the deans whom the Board found to be supervisory or managerial displayed a remarkable degree of acquiescence and often went so far as to proclaim their identity of interest with the faculty.

The full-time faculty as a whole or

through committees have not in fact acted simply in an advisory capacity, nor have they merely made recommendations which were accorded substantial weight; their decisions on major policy issues have, for the most part, proved definitive. Our review of the record leads us to conclude that at Yeshiva University, as Director Faivelson remarked of the Teacher's Institute: "The Faculty is the school."

Aside from the record, there is nothing in the Board's reasoning which would support the proposition that the full-time faculty is somehow acting on its own behalf and not that of the University.

In fact, a realistic assessment of the way in which a university such as Yeshiva functions, demonstrates the inapplicability of the "interest of the faculty" analysis in such a context:

The faculty, by the very nature of the educational process in institutions of higher education, participates in decision making which in private industry would normally be regarded as a management prerogative. The faculty at most four-year colleges and universities has a voice in determining standards for admissions, curriculum, degree requirements, faculty hiring and promotion, and even tuition rates. Such a state of independence is entirely unknown among the professionals in private industry.

Furthermore, in higher education there is no sharp dividing line between the employer and the employees. The university is, ideally, a professional community in which common educational interests supersede all potential divisions between the faculty and the administration. The university's unique set of goals (education, research, and service) is achieved only by a series of specialist communities working together through their common concern for enlarging and applying their own spheres of knowledge. Thus, there is no sharp dividing line between the community of administrators and the community of faculty, for both have the common goal of striving to further the institution as a house of learning.

Kahn, *supra*, at 68 (citation omitted).

This concept of "shared authority" in the university and private four-year college has its origins in the Middle Ages when teachers united "into a corporate body enjoying more or less autonomy" over the operation of the institution.

McHugh, *Collective Bargaining With Professionals in Higher Education: Problems in Unit Determinations*, 1971 Wis. L. Rev. 55, 65 (hereinafter cited as McHugh). In 1966, a Statement on Government of Colleges and Universities, 52 A.A.U.P. BULL. 375 (1966) (hereinafter cited as Statement), which was jointly formulated and approved by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges, applauded the principle of shared authority among the Board of Trustees, the administration, and the faculty. The statement recognized that

[t]hese three components have the joint authority and responsibility for governing the institution, and the essential and overriding idea is that the enterprise is joint and that there must be "adequate communication among these components, and full opportunity for appropriate joint planning and effort."

Kahn, *supra*, at 71.

Whatever the situation may be in other institutions, the record here establishes no significant divergence between the interests of the faculty and those of the administration or the Board of Trustees. On the contrary, the faculty has initiated, and the administration has repeatedly accepted, major policy determinations which constitute the essence of the University's educational venture. We cannot conclude that the full-time faculty here has acted in its own interest.

Even if it had, the University has accepted those decisions without hesitation so consistently that the Board's attempt to dichotomize those interests results in a strained, artificial separation. Whether the degree of control exercised by the faculty and the forbearance of the administrators is salutary fiscally and academically is not in issue here. In fact it does exist.

D. The Faculty is Not Managerial or Supervisory Because it is Subject to the Ultimate Authority of the Board of Trustees.

Although none of the criteria applied by the Board which we have so far discussed has any particular appeal, the concept that the faculty has neither managerial nor supervisory status because it is subject to the ultimate authority of the Board of Trustees is particularly unconvincing. Normally, every corporation is ultimately operated by its Board of

Directors, *W. Cary, Corporations* 153 (4th ed. 1969), and yet that fact obviously has never precluded a finding that there are managerial or supervisory employees in the corporation. Certainly the President and Vice-Presidents of Yeshiva as well as its Deans are subject to the ultimate authority of the Board of Trustees and yet this does not preclude them from holding managerial or supervisory status.

Section 2(11), in defining a supervisor, expressly includes those who have the power "effectively to recommend" any of the enumerated actions. Obviously then, the section contemplates a review by some higher authority. In another context we have already indicated

This power to review held by the immediate supervisors of the engineers whose status is at issue does not demonstrate that the latter are not "supervisors" under the Section 2(11) definition. The power to recommend promotion is, of course, not the power actually to promote and consequently *promotion recommendations will always be subject to review by those others who, in fact, have the final power to promote.*

NLRB v. Metropolitan Life Insurance Co., *supra*, at 1177 (emphasis supplied).

Private universities are usually created by charter under the corporation law of the state where they are located. Kahn, *supra*, at 124; see, e.g., N.Y.N.F.P. CORP. LAW § 701 (McKinney's supp. 1976). Hence, invariably there will be ultimate authority existing in a Board of Trustees or Directors. H. Oleck, *Non-Profit Corporations, Organizations and Associations* 300, 622 (1965). If this factor alone is to preclude full-time faculty members from assuming managerial or supervisory status, no matter what their actual involvement in the governance of an educational institution, then it is difficult to contemplate any situation where the statutory and Board-created exemptions can be applied. Of course, it may well be that at other institutions the Boards of Trustees have in fact regularly reviewed and rejected faculty recommendations, but this is not the case at Yeshiva.

IV

We are urged by the Board that its factual findings as to employee status are entitled to great weight and are not lightly set aside. *Stop & Shop Companies, Inc. v. NLRB*, 548 F. 2d 17, 18 (1st Cir. 1977); *NLRB v. Monroe Tube Co., Inc.*, 545 F. 2d 1320, 1325 (2d Cir. 1976); *Amalgamated Local 255 v. NLRB*, *supra*, at 100; *NLRB v. Metropolitan Life Insurance Co.*, *supra*, at 1172. Thus, a Board determination that an individual is an employee under the Act will stand if it has warrant in the record and a reasonable basis in the statute.

E.g., *Bayside Enterprises, Inc. v. NLRB*, 429 U.S. 298 (1977); *NLRB v. Hearst Publications*, 322 U.S. 111, 131 (1944).

However, with respect to the status of full-time faculty the Board here has made no factual findings which would preclude supervisory or managerial status, nor has the Board advanced any persuasive rationale for refusing to so categorize Yeshiva's faculty.

The Board concedes, in effect, the substantial impact of the full-time faculty both as supervisors and managers. Its denial of this status, as we have pointed out in Part III of this opinion, is based upon its continuing position, without further exposition, that full-time faculty are merely professional employees under section 2(12) of the Act. But this offers no solution to the problem since prior Board holdings and judicial opinions clearly indicate that the professional may also be supervisory or managerial.

The Board has also insisted that since the faculty act collectively, they must be denied supervisory or managerial status. While there may be some arguable warrant for this position on their status as supervisors in the wording of section 2(11), there is no reason in precedent or logic why this factor should be held to preclude managerial status for full-time faculty.

Oddly, the Board also found that department chairmen and faculty who serve on the Committee on Academic Priorities and Resource Allocation and on the University Faculty Review Committee were neither supervisors nor managers because they serve "primarily as instruments of the faculty" in these matters. If we accept the Board's argument that these chairmen and faculty committee members are simply instruments of the faculty, the Board is in the inconsistent position of finding that the full-time faculty at Yeshiva manages or supervises effectively by its collective or collegial action although this is the very process the Board utilizes to disqualify them as supervisors or managers. Another apparent contradiction is the Board's recognition of the ultimate authority of the Board of Trustees of Yeshiva although this body only acts collectively. Indeed, on the record here the "ultimate authority" of the trustees has little, if any, practical effect since, as at most universities, McHugh, *supra*, at 68; Statement, *supra*, at 376-77, the trustees' authority has been delegated to the faculty and administration.

It is clear that the Congress, when it amended the Act in 1947, had no contemplation that it would be applied to professional faculties in private institutions of higher learning. Their governance is unique and has no counterpart in the commercial business models the Act was designed to regulate. Absent a legislative amendment, it would seem that an appropriate method to explore fully the special problems created by the Board's assumption of jurisdiction here would be by rule-making. See *Trustees of Boston University v. NLRB*, *supra*, slip op. at 8; *NLRB v.*

Wentworth Institute, *supra*, at 556. Both the American Association of University Professors (which has filed an *amicus curiae* brief here) and the Association of American Universities have requested the Board to institute a rule-making proceeding to guide the determination of issues in representation cases involving faculty members of colleges and universities. On July 16, 1971, the Board denied the petition, stating in part, "The Board believes that to adopt inflexible rules for units of teaching employees at this time might well introduce too great an element of rigidity and prevent the Board from adapting its approach to a highly pluristic and fluid set of conditions." Quoted in Kahn, *supra*, at 88.

The Board here has argued that each case must rest on its own facts. However, in its adjudicative process the Board has consistently applied the rigid criteria we have discussed. In any event, in this case the facts compel the conclusion under long established standards that the full-time faculty has managerial status, and as the Supreme Court indicated in *NLRB v. Bell Aerospace Co., Division of Textron, Inc.*, *supra*, at 289, the Board is not now free "to read a new and more restrictive meaning into the Act."

We find here that the Board, for the reasons given, has applied unjustified, arbitrary standards and therefore we refuse to enforce the Board's order. See *Niagara University v. NLRB*, *supra*.



Faculty Senate

July 4, 1979

*Received
7/4/79*

To President Lloyd H. Elliott
From Reuben E. Wood

You asked the advice of the Executive Committee of the Faculty Senate concerning the request of Yeshiva University that G. W. U. join several other universities in preparing an amicus curiae brief to be presented to the Supreme Court. As you know, the Executive Committee was not of one mind on the matter.

After our meeting I returned to my office where there was a message from you to me stating that you had just heard that the decision to join or not the consortium preparing the brief had to be made by July 6. I got out my Faculty Organization Plan and noted in particular two statements. In Article III, Section 1 (2) it states that one function of the Senate is to "Provide the President and the Board of Trustees with advice and counsel on such matters as they may request". Then in Article III Section 5 (b) (6) it is stated that the Executive committee shall "Act on behalf of the Senate in emergencies on matters requiring immediate action when it is not feasible to call a special meeting of the Senate - - -".

In view of these two provisions of the F. O. P. I felt we could hardly avoid giving you advice in the matter you had put before us. I called up Gil Ginsburg and he and I agreed on a statement of the following kind. (Subsequently I have called Howard Pierpont and Fred Amling and read the statement to them and they agree to it. I assume that Pete Hill dissents, although I have not talked with him). The statement is:

We recommend that the G. W. U. join the consortium preparing the brief, and on the side of Yeshiva.

It should be clearly understood that this is the advice of the Executive Committee. It does not purport to be the recommendation of the Faculty, nor do we know how it would be viewed by the Senate itself. Probably a majority of the faculty are unaware of the Yeshiva case, and surely few know that we have been asked to join in an amicus curiae brief. We feel, furthermore, that when the brief has been drafted and is sent back here for a decision as to whether or not we will associate ourselves with it, every effort should be made to let the faculty read it and then to express itself as to whether or not to associate ourself with it.

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July 5, 1979

Professor Reuben Wood, Chairman
Executive Committee
Faculty Senate
George Washington University

Dear Reuben:

I want to thank you for not pushing the Yeshiva matter to a vote in the Executive Committee, and because I'll be in Maine when the Committee is again asked for its advice, I would take this opportunity to explain why I think the Committee should not take any position whatsoever on the amicus curiae brief which the University has been invited to file with the Supreme Court.

First, we do not have the "sense" of our constituents on this question. Nor can we assume the existence of a consensus one way or the other. I suspect that if our colleagues were put to debate, they would be deeply divided--even bitterly so when one considers the passion that typically attends a discussion of the right to organize and bargain collectively.

Second, unless we are reasonably sure that we represent a majority view of our constituents, they would not expect the Committee to "give advice" to the administration simply because "advice-giving" is a permissible option.

President Elliott was almost persuasive when he suggested that if faculties with managerial roles are not permitted to unionize while non-managerial faculties retain that right, university administrators will have strong incentive to broaden the supervisory roles of the latter. Such an outcome is possible, but speculative. More certain will be the need for every faculty to determine its own status. I do not, for example, agree with Gil Ginsburg's view that a high court ruling in favor of Yeshiva will not result in much litigation. As matters now stand, any faculty may organize and bargain collectively with no questions asked. If, however, the Court rules in favor of Yeshiva, many faculties would have to show cause why they should be allowed to unionize; and university administrations would oppose their arguments. The degree of managerial function, either qualifying or disqualifying a faculty for standing under the NLRA, would have to be litigated. However narrowly the Court may construe the meaning of its decision in the Yeshiva case, I'm sure that Gil would agree that a favorable ruling would have to be further refined, a process that can be accomplished only by trying (or hearing) particular cases. And while I have the ordinary citizen's confidence in the fairness of the



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judicial system, I would rather not see any obstacles at all put in the way of a faculty that feels the need to express its collective will by organizing a union.

Further, my "historical perspective" compels me to observe that the right to organize is not a right lightly to be thrust aside. Prior to passage of the Wagner Act, this sort of collective activity was at first treated as illegal conspiracy and later as a violation of the Sherman and Clayton antitrust acts. Only in our own lifetime has the right to organize been assured.

Nor am I persuaded that our professional status is enhanced by denying ourselves access to this right. Entirely apart from the favored situation that we enjoy at G.W., clearly certain types of professionals have not disdained to unionize in order to make their jobs more secure. Journalists come particularly to mind. But there are others, as well. Professional status, to be sure, suggests canons of conduct and personal obligations which may seem demeaned at the prospect of strikes and picket lines. But even our own colleagues are likely to take widely varying views of job security, advancement, salary, etc.--and the means that may be necessary to achieve them. I am not surprised, for example, to hear a university physician or lawyer express a lack of interest, even a distaste, for unions. The opportunities which these persons have for alternate employment--indeed, for self-employment--are likely to affect their attitudes in quite different ways from those, say, of our colleagues (here and elsewhere) who teach English, history, or classics.

Let me, then, end where I began: that the Committee will risk dividing the faculty by taking any position whatsoever on this issue. For us to provoke such division--without full faculty debate (which time does not permit)--and on that side of the issue most likely to cause division--would, I think, be highly undesirable.

Sincerely yours,

Peter Hill

Peter P. Hill, Member
Senate Executive Committee

cc: members of Sen. Exec. Cmte.



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July 5, 1979

Professor Reuben Wood, Chairman
Executive Committee
Faculty Senate
George Washington University

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Second, unless we are reasonably sure that we represent a majority view of our constituents, they would not expect the Committee to "give advice" to the administration simply because "advice-giving" is a permissible option.

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July 8, 1979

Professor Reuben Wood, Chairman
Executive Committee
Faculty Senate

Dear Reuben:

I don't mean to be obstreperous in the face of a committee majority, but inasmuch as you did not ask my opinion on the recommendation which you subsequently sent to the President on behalf of the Committee, I do wish to make my dissent a matter of record.

First, just as the Executive Committee cannot, in my opinion, speak for the faculty as a whole, neither can it speak for itself without appearing to speak for the Senate. We are, after all, the Senate's elected leadership. Whatever we say in our corporate capacity is inescapably a leadership statement. If, as your recommendation tries to suggest, committee members are, in this instance, speaking as individuals who just happen to be members of the Executive Committee, then our opinions on the Yeshiva case mean nothing; and the President would be well advised to give them no weight whatever.

Second, despite the disclaimer of its being either a Senate or a Faculty position, the recommendation is justified as an exercise of the Committee's interim "emergency" powers. This rationale puts the recommendation back in the category of an official act, grounded on authority conferred on the Committee by the Faculty Organization Plan. I'm not sure how consistently you can, in the same breath, cite authority for a spokespersonship which you deny exercising. Beyond this, however, I would question the existence of an "emergency" which, by definition, is a situation which requires immediate action without which adverse consequences would ensue. I am at a loss to know what faculty interest would have suffered, had the Committee made no recommendation at all, or what faculty interest has been advanced by the Committee's taking the position it has.

These are the arguments I would have made to our colleagues on the Committee, had I been apprised of the recommendation. I might even have changed their minds! At least I'd have welcomed the opportunity to try.

Cordially yours,

Peter Hill

Peter Hill, member
Sen. Exec. Cmte.

cc: Members, Sen. Exec. Cmte.